16-488

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 81.

THOMAS BRANCH, JOHN P. BRANCH, FREDERICK R. SCOTT, AND THOMAS P. BRANCH, PARTNERS AS BRANCH, SONS & CO., THE SOUTH GEORGIA AND FLORIDA RAILROAD COMPANY, W. B. BENNETT, ET AL., APPELLANTS,

vs.

MORRIS K. JESUP, SURVIVING TRUSTEE, AND THE ATLANTIC AND GULF RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

FILED OCTOBER 16, 1879.

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1 UNITED STATES OF AMERICA,
Southern District of Georgia, ss:

At a stated term of the 5th circuit court of the United States of America for the southern district of Georgia, held at the United States court-rooms in the city of Savannah, in and for the said district, on Monday, the fourteenth day of April, in the year of our Lord one thousand eight hundred and seventy-nine.

Present, the honorable Joseph P. Bradley, associate justice of the U. S. Supreme Court, presiding, and the Hon. John Erskine, U. S. judge for Georgia.

Bill of complaint.

MORRIS K. JESUP, SURVIVING TRUSTEE, &c., complainant,
and
THE ATLANTIC AND GULF RAILROAD COMPANY and Branch, Sons and Co. et al., intervenors pro interesse suo.

Be it remembered that heretofore, to wit, on the fifteenth day of February, A. D. 1877, came the said complainant, by W. S. Chisholm, his solicitor, and filed his bill of complaint against the said The Atlantic and Gulf Railroad Co., in the words and figures following, to wit:

2 *Bill.*

In the fifth circuit court of the United States for the southern district of Georgia, in the fifth judicial circuit. In equity.

To the honorable the judges of the fifth circuit court of the United States for the southern district of Georgia, in the fifth judicial circuit:

Your orator, Morris K. Jessup, a citizen of the State of New York, surviving trustee, as hereinafter mentioned, brings this his bill of complaint against The Atlantic and Gulf Railroad Company, a citizen of the State of Georgia, and thereupon your orator complains and says:

That your orator is a citizen of the State of New York, and that the said defendant, The Atlantic and Gulf Railroad Company, is a railroad corporation created by and organized and existing under the laws of the State of Georgia, and having its principal office and place of business within the southern district of Georgia.

That on or about the twentieth day of December, eighteen hundred and sixty-seven, the said The Atlantic and Gulf Railroad Company, be-
3 ing thereunto duly authorized and empowered by and under its charter, and the laws of the State of Georgia, and being the owner and possessor of a certain railroad in said State, extending from the city of Savannah to Bainbridge, in said State of Georgia, a distance of about two hundred and thirty-seven miles, and a branch thereof, running from Dupont, on the main line to the State line between Georgia and Florida, and there connecting with the leased line hereinafter mentioned, together with the appurtenances of said main line and branch, and the rolling-stock or equipment thereunto belonging, and also the leasehold interest in a certain other railroad, extending from the State line be-

tween Georgia and Florida to Live Oak, in the State of Florida, a distance of sixteen miles or thereabouts, with equipments and appurtenances thereof, held by the said The Atlantic and Gulf Railroad Company under lease from The Pensacola and Georgia Railroad Company, and also the other things embraced in and purporting to be covered by the mortgage deed hereinafter mentioned, duly made and executed under the corporate seal of the said The Atlantic and Gulf Railroad Company, with the signatures of its president and secretary attesting the same, and delivered unto your orator and one John R. Gard-
4 ner, then residing in the city of New York, and a citizen of the State of New York, and now deceased, its certain indenture of mortgage or deed of trust to your orator and said John R. Gardner, as trustee, bearing date on said twentieth day of December, eighteen hundred and sixty-seven, whereby the said The Atlantic and Gulf Railroad Company conveyed in mortage unto your orator and said John R. Gardner, and the survivor of them, and their successors and assigns forever, the before-mentioned railroad, owned and possessed by said company, extending from Savannah to Bainbridge, with the before-mentioned branch from Dupont to the State line, together with the appurtenances and rolling-stock and equipment thereof, respectively, and its said leasehold interest in the said railroad extending from the State line to Live Oak, with the appurtenances & equipments thereof, together with the income, tolls, rents, issues, and profits of both said railroads, and the franchises, rights, and privileges belonging or appertaining to the same, respectively, and the other things embraced in and purporting to be conveyed by said mortgage or deed of trust, to be had and holden by your orator and the said John G. Gardner, and the survivor of them, and their or his heirs, successors, and assigns, forever, in trust, to secure the payment of the principal and interest of certain
5 bonds then proposed to be issued and negotiated by said railroad company to the aggregate amount of two million of dollars, in bonds for one thousand dollars and for five hundred dollars each, all dated December twentieth, eighteen hundred and sixty-seven, bearing interest at the rate of seven per cent. per annum, from July first, eighteen hundred and sixty-seven, payable semi-annually, on the first days of January and July, in each year, at the agency of said railroad company in the city of New York, or at their office in the city of Savannah, at the option of the holder, and the principal payable on the first day of July, eighteen hundred and ninety-seven, a copy of which said indenture of mortgage or deed of trust is to this bill annexed in a schedule marked A, and which your orator prays may be taken as part of his bill.

And your orator further showeth that the execution of the said indenture of mortgage or deed of trust by the said The Atlantic and Gulf Railroad Company was afterwards duly acknowledged and authenticated according to the laws of the State of Georgia, so as to entitle the same to be recorded, and the said indenture of mort-
6 gage or deed of trust was afterwards duly recorded in accordance with the laws of the State of Georgia.

And your orator further showeth that the said John R. Gardner died on or about the month of December, eighteen hundred and seventy-one, and no successor of said John R. Gardner in the trusteeship created by or under said indenture of mortgage or deed of trust has ever been appointed; and your orator, as the sole surviving trustee, is now vested with the entire estate, and with the trusts, rights, & powers

under said indenture which were originally invested in him and the said John R. Gardner.

And your orator further showeth that after the execution of the above-mentioned indenture of mortgage or deed of trust, the said The Atlantic and Gulf Railroad Company duly made, executed, and issued and negotiated and transferred, for full and valuable consideration by said railroad company the bonds of the description and form and tenor in said indenture of mortgage provided for and recited, and intended and purporting to be hereby secured, to the aggregate amount of two millions of dollars in said indenture provided for, conforming to the recital and specifications of said indenture in that behalf, accompanied by the certificate of your orator and said Gardner as trustees and with coupons for the interest thereon annexed thereto in the form pro-
7 vided for by said indenture, excepting only bonds to the aggregate amount of three hundred and thirty-four thousand dollars, parcel of said amount of two million dollars, which bonds for three hundred and thirty-four thousand dollars remain unissued and have been reserved from issue and negotiation because a corresponding amount of the prior sectional mortgage bonds having liens upon particular sections of the said railroad, and which were designed to be provided for by means of so called consolidated bonds issued under the said mortgage to your orator and said John R. Gardner, have not been as yet taken up, but still remain outstanding, and have prior lien upon the respective portions of the said railroad covered thereby, but that the remainder of the said bonds issued under and secured by the said mortgage or deed of trust to your orator and said John R. Gardner, that is to say, such bonds to the aggregate amount of sixteen hundred & sixty-six thousand dollars of principal now remain outstanding and in full force and effect in the hands of the respective parties to whom the same have been duly negotiated, and who are the owners and holders thereof for value, and the holders of such bonds, who are
8 very numerous, and your orator as surviving trustee, as aforesaid, on their behalf, are entitled to the benefit of the security provided by said mortgage or deed of trust.

And your orator further showeth that the said The Atlantic and Gulf Railroad Company has made default in the performance of the conditions and stipulations contained in the said indenture of mortgage, or deed of trust and in the said bonds for sixteen hundred and sixty-six thousand dollars issued thereunder, and secured thereby, and now outstanding as aforesaid. That the said railroad company wholly failed to pay or to make any provision for the payment of either, at said company's office or agency in the city of New York, or in the city of Savannah, or elsewhere, or otherwise howsoever, the six months' interest on the said outstanding bonds for sixteen hundred and sixty-six thousand dollars, which became due and payable on the first day of January, eighteen hundred and seventy-seven; but has admitted and announced its inability to meet and pay such interest, and that on the second day of January, eighteen hundred and seventy-seven, the first day of January being a legal holiday in New York; the interest coupons falling due on said first day of January, upon a large amount of
9 the said outstanding bonds for sixteen hundred and sixty-six thousand dollars, issued under and secured by said mortgage or deed of trust, were duly presented for payment at the said company's office or agency in the city of New York, and payment thereof was duly demanded, and such payment was refused for want of funds, and the said interest coupons remain wholly unpaid, and in default; and that the

amount of interest now in arrear and unpaid upon the said outstanding bonds, for sixteen hundred and sixty-six thousand dollars, issued under and secured by said mortgage or deed of trust, is fifty-eight thousand three hundred and ten dollars; and by reason of such default made in the conditions of said mortgage or deed of trust, it has become your orator's duty, as trustee, to enforce the security of said mortgage or deed of trust, upon the property and franchises embraced in and covered by said mortgage or deed of trust, for the benefit and security of the said bondholders, for whom your orator is trustee.

And your orator further showeth that after the execution of the said mortgage or deed of trust, to your orator and the said John R. Gardner, the said The Atlantic and Gulf Railroad Company pur-
10 chased and became the owner of, and they still own the railroad, with its appurtenances, extending from the State line between Georgia and Florida, to Live Oak, in the State of Florida, a distance of about sixteen miles, which had been leased to the said The Atlantic & Gulf Railroad Company, by the Pensacola & Georgia Railroad Company, by the indenture of lease dated November nineteenth, 1867, which lease was embraced in, and covered by the said indenture of mortgage, or deed of trust to your orator and said John R. Gardner, and such railroad line in Florida, between the State line and Live Oak, has been and is used and operated, together with the branch of the said Atlantic & Gulf Railroad, situate in the State of Georgia, extending from Dupont, on the main line of the Atlantic & Gulf Railroad, a distance of thirty-two miles, or thereabouts, to the point of connection on the State line between Georgia & Florida, and there is thus formed, and has been, and is being operated by the said The Atlantic and Gulf Railroad Company a continuous line of railroad, about forty-eight miles in length, extending from Dupont, in Georgia, to Live Oak, in Florida; running as a branch of and in connection with the main line of the At-
11 lantic & Gulf Railroad, between Savannah and Bainbridge; and the freight & passenger business of said branch line to Live Oak, as thus connected, forms a very important and valuable portion of the through freight and passenger business of the said Atlantic & Gulf Railroad Company, having, as well a local business, and constitutes an important of the security of the bondholders for whom your orator is trustee as aforesaid.

And your orator further showeth that in addition to the before-mentioned line from Savannah to Bainbridge, and the said branch from Dupont to Live Oak the said The Atlantic and Gulf Railroad Company also possesses, owns, and operates in connection with and as a part of its said railroad the following described other lines of railroad situate in the said State of Georgia; that is to say, a branch of its said railroad, about fifty-eight miles in length, extending from Thomasville, on the main line between Savannah and Bainbridge to Albany, in the county of in said State of Georgia, which said branch formerly belonged to the South Georgia and Florida Railroad Company, and is subject to a lien in favor of the State of Georgia, created before said road became the property of the Atlantic and Gulf Railroad
12 Company, and which is paramount to its title for the principal and interest of certain bonds to the amount of six hundred and sixty-four thousand dollars or thereabouts, and likewise two short branches used in connection with and as part of said main line, viz, one of about two miles in length extending from the depot in the city of Savannah to the wharves on the Savannah River, including such wharves, this branch being subject to a purchase-money mortgage of

thousand dollars or thereabouts, and one of about four miles in length, known as the junction branch connecting the main line aforesaid, with the Savannah and Charleston Railroad, this branch being subject to a purchase-money mortgage of fifty thousand dollars or thereabouts.

And your orator further showeth that the before-mentioned, prior, and paramount lien upon the said branch line from Thomasville to Albany for six hundred and sixty-four thousand dollars and interest, or thereabouts, is accompanied by a right of the State of Georgia to enter upon and take posession of the said line of railroad with its appurtenances in case of default being made in the due payment of the
13 interest upon such bonds as it falls due; that such interest is payable semi-annually, and a semi-annual instalment of interest upon such bonds, or upon a large proportion thereof, will fall due on the first day of May next. That the said branch line between Albany & Thomasville is a very important and valuable portion of the railroad line of the said Atlantic and Gulf Railroad Company and contributes by its business a large and important portion of the through freight and passenger business of the said main line, which would be liable and likely to be diverted to another line of transportation in case the said branch line to Albany should pass out of the control of the Atlantic and Gulf Railroad Company, or the representatives of its title and interest, and such branch line, with its connections, and the business flowing to the main line therefrom constitutes a very important and valuable portion of the security of the bondholders for whom your orator is trustee, and the maint*a*inance of said branch under the control of said Atlantic and Gulf Railroad Company, or the representatives of its title and interest, and the continued and uninterrupted operation of such branch in connection with and as part of said main line are essential to the due preservation of the security of said bondholders.

14 And your orator further showeth that there still remain outstanding and in full force and effect mortgage bonds to the amount of three hundred and thirty-four thousand dollars, besides interest, parcel of the sectional mortgage bonds referred to in the said mortgage to your orator and said John R. Gardner, and which were intended to be provided for and taken up out of the proceeds of bonds issued under that mortgage, which constituted liens prior and paramount to the lien of the before-mentioned mortgage held by your orator as surviving trustee, upon sections or portions of the said railroad covered by the said mortgage held by your orator, and that these outstanding sectional bonds, or at least the great proportion thereof, and the mortgage and mortgages whereby the same are secured, and so conditioned that if the semi-annual interest falling due thereon is suffered at any time to remain in arrear and default for ninety days, the principal of such bonds is liable to become presently due and payable at the option of the holders of such bonds, although the term originally fixed for the payment of such principal is yet far distant. That on the first day of January, eighteen hundred and seventy-seven, the semi-
15 annual interest fell due upon three hundred and thirty-four thousand dollars, or thereabouts, of these outstanding sectional mortgage bonds which have the special condition last above stated. That said railroad company wholly made default in such interest and the same remains in arrear and unpaid. That if by reason of ninety days' continuance of such default the principal of said bonds should be suffered to become due, the security of the bondholders for whom your

orator is trustee would be very seriously jeoparded and prejudiced, and great and irreparable loss and prejudice would also result therefrom to the said railroad company and its other creditors, and all parties in interest other than said prior sectional bondholders. And your orator further showeth that besides the mortgage and secured debts hereinbefore particularly set forth, the said company has a large unsecured floating debt, the amount whereof, according to the best information which your orator has been able to obtain, and as he verily believes, is about five hundred and forty-seven thousand dollars, and besides this the said company is indebted upon so-called coupons notes to the amount
16 of five hundred thousand dollars, falling due in the month of April, eighteen hundred and seventy-seven, which are collaterally secured by a deposit in trust of so-called second mortgage bonds of said railroad company to the amount of one million of dollars, which are subsequent in date to the said mortgage held by your orator as trustee.

And your orator further showeth, that according to his best knowl edge and information, upon diligent and careful inquiry, and as he verily believes to be true, there are included in the unsecured floating debt of said railroad company hereinbefore referred to, the following named sums of indebtedness and of the descriptions following, that is to say, the said company's notes or bills payable to about the amount of two hundred thousand dollars; arrears of wages to employees, commonly called pay-rolls, to about the amount of eighty-four thousand dollars; obligations of said company, commonly called fare-bills, purporting to be receivable in payment of freights and passenger fares due the company, amounting to about seventy thousand dollars; arrears of dividends due upon guaranteed stock, for which said company is
17 liable to suit and recovery of judgment as upon a debt, amounting to about one hundred and thirty-two thousand dollars; besides a large amount of other indebtedness, in the shape of bills for supplies, open accounts, & otherwise.

And your orator further showeth that said company possesses at present but a small amount of cash funds or other available means, and cannot or could not expect to, and will not possess in the near future any considerable addition to its cash means or resources other than such net income as it might be able to obtain from the operation of its railroad over and above the expenses of maintaining and operating its railroad, and such cash and other available means at present and for the immediate future are necessarily and will be wholly insufficient to enable it to meet its pecuniary obligations and continue its business, and said railroad company is in a state of great pecuniary embarrassment.

That it is essential to the security of the bondholders for whom your orators is trustee as aforesaid, and to the maintenance of their rights and interests, and also greatly to the general in-
18 terests of the other bona fide creditors of said company, whether secured or unsecured, and to the interest of all legitimately concerned in the premises, that the before-mentioned line of the said Atlantic and Gulf Railroad, including the several branches hereinbefore mentioned, which have been accustomed to be and are now being used and operated in connection with said main line as aforesaid, should continue to be maintained, used, and operated as one entire railroad enterprise, as hitherto; and that no interruption or dislocation of the freight or passenger business thereof should be at all permitted to occur; and if any such interruption were permitted there would be serious danger of consequent diversion of the currents of busi-

ness into other channels with lasting effect; and the value of the said railroad, with its appurtenances so mortgaged to your orator as trustee for said bondholders secured thereby, be seriously interfered with, prejudiced, and deteriorated to the great and irreparable loss and damage of the said bondholders for whom your orator is trustee, as well as to the great jeopardy and loss of other bona fide creditors, and the other interests legitimately involved, and thereby also the income of said
19 railroad, which by said mortgage is also hypothecated to your orator as trustee for said bondholders would be greatly impaired and deteriorated to the great and irreparable loss and damage of your orator and the bondholders for whom he is trustee, and to the end aforesaid, and for the protection and preservation of the rights and interests of your orator as trustee, and of the bondholders in whose behalf he is trustee, it is likewise and especially that such measures should seasonably be taken as may avoid the falling due and consequent enforcement of payment of the principal of the said prior sectional mortgage bonds to the amount of three hundred and thirty-four thousand dollars, and likewise such measures as may avoid giving occassion to the State of Georgia to enter upon and take possession of the said branch line from Thomasville to Albany, as a consequence of default in the interest upon said bonds for six hundred and sixty-four thousand dollars, being the paramount lien upon that branch.

And your orator further showeth, that in consequence of the default made by said railroad company in the payment of its mortgage
20 interest as aforesaid, in connection with its pecuniary condition in other respects the credit of said company has become broken down, that a large amount of said unsecured floating debt is already past due, and the residue will be rapidly and constantly falling due, and it is, and will be impossible for said company to maintain its credit, or longer to carry along successfully such floating unsecured debt.

That by the laws and usages in the State of Georgia the sum due and owing, and from time to time becoming due and owing to said railroad company for the freights and earnings of its railroad, accumulating in the hands of parties with whom it has connection, or otherwise outstanding as debts due and owing to said company, are and will be from time to time liable to seizure upon garnishment or attachment by parties holding unsecured floating debts against said company, who may choose to commence suit for recovery thereof, thus depriving the company of the cash means absolutely necessary in order to pay current expenses and continue the operation of the road; that not only the freights and earnings, but also the tangible personal property of said company, when in the State of Florida, or elsewhere out of
21 Georgia, in the necessary course of carrying on the company's transportation business are and will be likewise subject to seizure and attachment by floating debt creditors who may choose to commence suits or legal proceedings for recovery of their claims, and that under the existing circumstances the said railroad company cannot safely or successfully operate its road and carry on its transportation and other business, and that it is essential to the security, and to the protection and preservation of the rights and interests of the bondholders for whom your orator is trustee, as well as for the general interest of the other bona fide creditors of said company, and of all others legitimately concerned in the premises, that without delay a receiver or receivers should be appointed by this court of all and singular the railroad of the said the Atlantic and Gulf Railroad Company, including the several branches thereof aforesaid, with the appurtenances and

rolling-stock and equipments thereof, and the rents, issues, profits, tolls, and income of said railroad and branches, and all the other property, rights, and interests mentioned in the said mortgage or deed of trust held by your orator as surviving trustee as aforesaid,
22 and that said railroad company should be ordered and directed to assign, transfer, and deliver over all and singular the same to such receiver or receivers, to be had and holden subject to the order of this court in the premises, to the end and purpose that the said railroad and branches may be continued to be used, run, and operated, and the income thereof to be received by such receiver or receivers without disturbance or interruption, and that the net income accruing therefrom while under such receivership may be applied and disposed of by the order and under the direction of this court, for the protection and preservation of the said property, and in such manner as shall be expedient for the interest of those concerned and agreeable to the legal and equitable rights of your orator and the bondholders for whom he is trustee, and of all parties legitimately concerned or interested in the premises.

To the end, therefore, that the said defendant, The Atlantic and Gulf Railroad Company, may answer upon oath according to the course and practice of this court, all and singular the premises, and that, as your orator now prays, by the order of this court and pending
23 this suit, a receiver or receivers may be appointed of all and singular the before-mentioned railroad of the Atlantic and Gulf Railroad Company, extending from Savannah to Bainbridge, and the said branches thereof extending, respectively, from Dupont to Live Oak and from Thomasville to Albany, and from the depot in the city of Savannah to the wharves on the Savannah River, including said wharves and the said branch called the Junction Railroad connecting the main line with the Savannah and Charleston Railroad, and the appurtenances and equipments or rolling-stock of said railroad and branches, respectively, and the rents, issues, and profits, tolls and income of all and singular said railroad and branches, and all other the properties, rights, and interests mentioned in and purporting to be conveyed or covered by the said mortgage or deed of trust executed to your orator and said John R. Gardner as trustee, to be had and holden by said receiver or receivers, subject to the orders of this court in the premises, and with such orders and directions to the said receiver or receiv-
24 ers from time to time in relation to the maintenance and management and operation of said railroad and branches and the application of the income and earnings thereof and the management and disposition of all the property involved in such receivership as to the court may seem fit and agreeable to equity, and that the said defendant The Atlantic and Gulf Railroad Company may be ordered and compelled to assign and transfer in proper and effectual form to the said receiver or receivers all the property, rights, interests, and things embraced in such receivership, and that an account may be taken of the amount due and owing upon the outstanding bonds which are entitled to the benefit of the security of the said mortgage held by your orator as surviving trustee, as aforesaid, and that the said The Atlantic and Gulf Railroad Company may be adjudged and decreed by some short day to be fixed for the purpose to pay the same; and that in default of such payment the said The Atlantic and Gulf Railroad Company and all persons claiming under it subsequently to the commencement of this suit may be barred
25 and foreclosed from all equity of redemption and right, title, and interest in or to the said railroad and branches, with the appurte-

nances and franchises and rolling-stock or equipment thereof, and all other the properties, rights, and things embraced in or covered by the said mortgage or deed of trust held by your orator as surviving trustee, as aforesaid, and that all and singular the same may be sold under and according to the decree and under the direction of this court; and that from the net proceeds of such sale there be paid the amount of principal and interest due or owing upon or secured by the outstanding bonds which are entitled to the benefit of the security of the said mortgage or deed of trust held by your orator as surviving trustee, together with the costs and expenses of this suit, and your orator's commission or compensation as trustee; and that your orator may have such further or such other order, decree or relief in the premises as may be agreeable to law and equity:

May it please your honors to grant unto your orator the writ
26 of subpœna issuing out of and under the seal of this court, directed to the said defendant The Atlantic and Gulf Railroad Company, commanding it to be and appear in this court according to the course and practice thereof, then and there to answer all and singular the premises, and to stand to, abide, and perform such order and decree in the premises as may be agreeable to equity.

And your orator will ever pray, &c.

MORRIS K. JESSUP.

W. S. CHISHOLM,
Compl'ts Solicitor.
EVARTS, SOUTHMAYD & CHOATE, *of New York.*
Compl't's Solicitor & of Counsel.

SOUTHERN DISTRICT OF NEW YORK:

Morris K. Jessup, the complainant in the foregoing bill named, being duly sworn, deposeth and saith that he has read the said foregoing bill of complaint by him subscribed, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes the same to be true; and further saith not.

MORRIS K. JESSUP.

Subscribed and sworn before me, at the city of New York, on the 8th day of January, 1877.

EDWARD L. OWEN,
U. S. Commissioner for the So. Dist. of N. Y.

27 *Schedule marked A, referred to in the foregoing bill of complaint.*

This indenture made the twentieth day of December, in the year one thousand eight hundred and sixty-seven, between the Atlantic and Gulf Railroad Company, a corporation created by or under the laws of the State of Georgia, and formed by the consolidation of two other railroad corporations, formerly known, the one as The Atlantic and Gulf Railroad Bompany, and the other as The Savannah, Albany and Gulf Railroad Company, under and by virtue of an act of the general assembly of the State of Georgia, entitled "An act to authorise the consolidation of the stock of The Savannah, Albany and Gulf Railroad Company and The Atlantic and Gulf Railroad Company, and for other purposes," passed April 18th, 1863, party of the first part, and John R. Gardner and Morris K. Jesup, both of the city of New York, trustees, parties of the second part.

Whereas the party of the first part has heretofore issued bonds for the sum of one million five hundred thousand dollars, and has
28 secured the same by mortgages upon different sections of its railroad;

And whereas it is desirous of consolidating its mortgage indebtedness and of raising money to complete its railroad to the State line, and for those purposes desires to borrow the sum of two millions of dollars, and to secure the payment of said sum of two millions of dollars, to execute, issue, and deliver one thousand five hundred bonds, or writings obligatory, each for the sum of one thousand dollars, and one thousand bonds each for the sum of five hundred dollars, the bonds for one thousand dollars being numbered from one to one thousand five hundred, both inclusive, and the bonds for five hundred dollars being numbered from fifteen hundred and one to twenty-five hundred, both numbers inclusive, all dated the twentieth day of December, one thousand eight hundred and sixty-seven, bearing interest at the rate of seven per cent. per annum, free of government tax from the first day of July, one thousand eight hundred and sixty-seven, payable semi-annually on the first days of January and July in each year at the agency of said company, in the city of New York, or at their office, in
29 the city of Savannah, and the principal thereof payable at the said office or agency, in the city of New York, or in the city of Savannah, on the first day of July, one thousand eight hundred and ninety-seven, all of said bonds to stand equally secured by these presents, and are all of like tenor and in form following except as to amounts:

No. .] UNITED STATES OF AMERICA. [$500.

STATE OF GEORGIA.

Atlantic and Gulf Railroad Company.—Consolidated mortgage bond.

Know all men by these presents that The Atlantic and Gulf Railroad Company is indebted to John R. Gardner and Morris K. Jesup, of the city of New York, or bearer, in the sum of five hundred dollars, lawful money of the United States of America, which the said company promises to pay to the said John R. Gardner and Morris K. Jesup, or to the bearer thereof, on the first day of July, one thousand eight hundred and sixty-seven, at the rate of seven per centum per annum, payable semi-annually, free of government tax, imposed or to be imposed, at the said office or agency, in the city of New York, or in the city of Savannah, on the first days of January and July in each year, on presentation and surrender of the annexed coupons as they
30 severally become due.

This bond is one of a series, amounting in the aggregate to two millions of dollars, and consisting of one thousand five hundred bonds, each of which is for one thousand dollars, numbered from one to one thousand five hundred, inclusive, and one thousand bonds, each of which is for five hundred dollars, and numbered from fifteen hundred and one to twenty-five hundred, both numbers inclusive, and all of which are of like tenor and date, and the payment of which is secured by a mortgage dated the twentieth day of December, one thousand eight hundred and sixty-seven, made and executed by The Atlantic and Gulf Railroad Company to John R. Gardner and Morris K. Jesup, as trustees.

And it is agreed by said company that this obligation, and all rights and benefits arising therefrom, may be transferred by general or special endorsement, or by delivery; and it is further agreed by the said company, with each successive holder of this bond, that in case of any default in the payment thereof the said company will waive, and
31 hereby waives, the benefit of any extension, stay, or appraisement laws now existing or which may hereafter exist.

This bond shall not become obligatory until it shall have been authenticated by a certificate endorsed hereon and duly signed by the trustees.

In witness whereof the said Atlantic and Gulf Railroad Company has caused its common seal to be hereto affixed, and the same to be subscribed by its president and secretary on the twentieth day of December one thousand eight hundred and sixty-seven.

Sec'y.

Pres't.

We hereby certify, that the above bond is secured by a mortgage dated the twentieth day of December one thousand eight hundred and sixty-seven, on the railroad property and franchises of the Atlantic and Gulf Railroad Company, executed by the said company to us, John R. Gardner and Morris K. Jesup as trustees, and that this bond is one of one thousand of five hundred dollars each, all of even
32 tenor and date. And we further certify, that there are attached to the mortgage securing this bond internal revenue stamps to the amount of two thousand dollars, being the full amount on two millions of dollars of bonds secured thereby.

JOHN R. GARDNER,
MORRIS K. JESUP,
Trustees.

STATE OF GEORGIA. ATLANTIC AND GULF RAILROAD COMPANY.

No. .

There is due to the bearer seventeen $\frac{50}{100}$ dollars, being the interest for six months on bond for five hundred dollars, due the first day of , payable at the company's office or agency in Savannah or New York, at the option of the holder.

$17.50.]

Treasurer.

Now, therefore, this indenture witnesseth that the said party of the first part, the better to secure the payment of the said bonds, with interest, at the times and in the manner therein mentioned and set forth, and for and in consideration of the sum of one
33 dollar by the parties of the second part in hand paid to the party of the first part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, conveyed, transferred, and set over, and by these presents doth grant, bargain, sell, convey, transfer, and set over to the said parties of the second part, and the survivor of them, and his and their successors and assigns forever, all and sin-

gular the following property of the party of the first part in the State of Georgia, viz, all its railroad, constructed or to be constructed, from the city of Savannah to Bainbridge, or to and from any other points in the State of Georgia, with its superstructure, tracks, rails, bridges, viaducts, culverts, fences, and all other appurtenances, together with all rights of way now acquired or obtained, or hereafter to be acquired or obtained by the said party of the first part, and including all depots, engine-houses, car-houses, station-houses, and other structures; all machine-shops and other shops, and the lots, peices, or parcels of ground on which the same are or may be erected, and all the
34 peices of land which shall be used for depots or station purposes, with the appurtenances, also all locomotives, tenders, cars, and other rolling-stock or equipment, and all machinery, tools, implements, fuel, and materials acquired, or to be hereafter acquired, for the constructing, operating, repairing, or replacing the said railroad, or any part thereof, or any of its equipment or appurtenances, and including also all franchises, rights, and privileges of the said party of the first part, connected with or relating to said railroad, or the construction, maintainance, or use thereof; but nothing herein contained shall be construed as including any lands of the company not necessary to be retained for the roadway, depot-grounds, stations, shops, engine-houses, car-houses, nor required for the construction or convenient use of the road, also a certain indenture of lease, dated November 19, 1867, between the Pensacola and Georgia Railroad of the first part, and the Atlantic and Gulf Railroad of the other part, and the interest
35 of the said Atlantic and Gulf Railroad Company therein, and in and to the said property and railroad therein described, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining; and the reversion and reversions, remainders, tolls, incomes, rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand, whatsoever, as well *as* at law as in equity, of the said party of the first part, of and in to the same, and any and every part thereof, with the appurtenances: To have and to hold the said premises, and every part thereof, unto the said parties of the second part, and the survivors of them, and their or his heirs, successors, and assigns forever upon the following trusts, that is to say:

First. In case default shall be made in the payment of the interest on any of the said bonds, according to the tenor thereof, or of the coupons thereto annexed, or in the payment of any prin-
36 cipal of any of the said bonds, according to the tenor thereof, or of the coupons thereto annexed, or in the payment of any principal of any of the said bonds when the same shall become due and be demanded, and if any such default shall continue for the period of sixty days, or in case of any default in any requirement hereof to be done or kept by the Atlantic and Gulf Railroad Company, and if any such default shall continue for the period of sixty days, *or in case of any default in any requirements hereof to be done or kept by the Atlantic and Gulf Railroad Company, and if any such default shall continue for the period of sixty days*, then, and in either case, the said John R. Gardner and Morris K. Jesup, or the survivor of them, or their or his successors in the trusts created or declared by this indenture, personally, or by their or his attorneys or agents, may, or upon requisition of the holders of a majority of the bonds secured hereby, shall enter into and upon all and sin-
37 gular the premises hereby conveyed, or intended so to be, and each and every part thereof, and have, hold, and use the same,

operating by their or his superintendents, managers, receivers, or servants, or other attorneys or agents, the said railroad and the conducting the business thereof, and exercising the franchises pertaining thereto, and making from time to time all repairs and replacements, and such useful alterations, additions, and improvements thereto as may seem to them or him judicious, and collecting and receiving all tolls, freights, incomes, rents, issues, and profits of the same, and every part thereof, and after deducting the expenses of operating the said railroad and conducting its business, and of all the said repairs, replacements, alterations, additions, and improvements, and all payments which may be made for taxes, assessments, charges, or liens prior to the lien of these presents upon the said premises, or any part thereof, as well as just compensation for their or his own services, and for the services
38 of such attorneys or counsel as may have been by them or him employed, shall apply the monies arising as aforesaid to the payment of interest on the bonds secured hereby, in the order in which such interest shall have become due or shall become due, rateably to the persons holding the coupons evidencing the right to such interest, and, after paying all interest which shall have become due, to apply the said moneys to the payment of the principal of the bonds secured hereby rateably to the persons holding said bonds, and after the payment of the principal of all the bonds secured hereby, if any surplus shall remain, to pay over the said surplus to the party of the first part, or dispose of the same as any court of competent jurisdiction may order.

And the party of the first part hereby covenants and agrees that upon default, as herein specified, it will immediately upon demand made deliver, surrender, and yield up to the parties of the second part, or the survivor of them, or their or his successors, the premises
39 and property hereby conveyed and transferred, or intended so to be, and permit the said trustees to operate and maintain said railroad and the appurtenances.

Second. In case any default shall be made, as hereinbefore defined, and shall continue, as hereinbefore specified, then, and in any such case, the said John R. Gardner and Morris K. Jesup, or the survivor of them, and their or his successors, in the trust created or declared by this indenture may, or upon requisition of the holders of a majority of the bonds secured hereby, shall, after entry as aforesaid, or other entry, or without entry personally, or by their or his attorneys or agents, sell and dispose of all and singular the premises hereby conveyed, or intended so to be, at public auction in the city of New York, or at such place within the State of Georgia as the trustees, or the survivor of them, or their or his successors, may designate, and at such time as they or he may appoint, having first given notice of the time and place of such sale by advertisement, published not less than three times
40 a week for six weeks, in one or more newspapers in each of the cities of New York and Savannah, or to adjourn the said sale from time to time, in their or his discretion, and if so adjourning, to make the same without further notice at the time and place to which the same may be so adjourned; and to make or deliver to the purchasers thereof good and sufficient deed or deeds in the law for the same in fee simple; which sale, made as aforesaid, and whether subject to the said lien or otherwise, shall be a perpetual bar, both in law and equity, against the parties to these presents, and all other persons lawfully claiming or to claim the said premises, or any part thereof, by, from, through, or under them, or any or either of them; and after deducting

from the proceeds of such sale, first, allowances for all expenses thereof, attorneys and counsel fees, and all other expenses, advances, or liabilities which may have been made or incurred by the said trustees in operating or maintaining the said railroad or in managing its busi-
41 ness while in their or his possession, and in arranging for and completing the sale thereof and all payments which may have been made by them or him for taxes or assessments, and charges and liens prior to the lien of these presents on the said premises, or any part thereof, as well as compensation for their or his own services apply the said proceeds to the payment of interest on the bonds secured hereby in the order in which such interest shall have become or shall become due, rateably to the persons holding the coupons evidencing the right to such interest, and after paying all interest that shall have become due, to apply the said proceeds of the sale to the payment of the principal of the bonds secured hereby, rateably to the persons holding said bonds, and after the payment of the principal of all the bonds secured hereby, if any surplus shall remain to pay over the said surplus to the party of the first part, or dispose of the same, as any court of competent jurisdiction shall direct; and it is hereby declared that the
42 receipt or receipts of the said trustees shall be a sufficient discharge to the purchaser or purchasers of said premises, for his or their purchase money, and such purchase' or purchasers, his or their heirs, executors, or administrators shall not, after payment thereof, and having such receipts, be liable to see to its being applied upon, or for the trusts and purposes of these presents, or in any manner whatever be answerable for any loss, misapplication, or non-application of such purchase money or any part thereof, or be obliged to enquire into the necessity, expediency, or authority for any such sale.

Third. That in case of any default as hereinbefore defined, the said trustees may adopt any legal or equitable method for foreclosing this mortgage and enforcing the trusts herein contained, or for collecting the principal and interest of the bonds secured hereby.

Fourth. The trustees shall have full power, in their discretion, upon the written request of the company, to convey by way of release or otherwise, to the persons designated by the said company, any lands acquired or held for the purposes of stations,
43 depots, shops, or other buildings, and shall also have power to convey, as aforesaid, on like request any lands or property which, in the judgment of the trustees, shall not be necessary for use in connection with the said railroad, or which may have been held for a supply of fuel, gravel, or other material, and also to convey as aforesaid on like request any lands not occupied by the track which may become disused by reason of a change of the location of any station-house, depot, shop, or other building connected with the said railroad and such lands occupied by the track and adjacent to such station, depot, shop, or other buildings as to the said company may deem it expedient to disuse or abandon by reason of such change, and to consent to any such change and to such other changes in the location of the track or depot, or other buildings as in their judgment shall have become expedient, and to make and deliver the conveyances necessary to carry the same into effect, but any lands which may be acquired for
44 permanent use in substitution for any so released shall be conveyed to the trustees upon the trusts of these presents; and the proceeds of all lands released as aforesaid which shall not be applied in perchase of others in substitution, shall be paid over to the trustees, to be by them applied to the purchase of bonds of the said com-

pany in open market, and the trustees shall also have power to allow the said company, from time to time, to dispose of according to their discretion such portions of the equipments, machinery, and implements at any time held or acquired for the use of the said railroad as may have become unfit for such use, replacing the same by new, which shall be conveyed to the trustees, or be made otherwise subject to the provisoes, conditions, limitations, trusts, powers, covenants, agreements, and provisions reserved or contained in this indenture or granted declared, or created thereby.

Fifth. Upon a default in the payment of the interest or prin-
45 cipal of the bonds hereby secured or in the performance of any of the covenants herein contained upon a requisition in writing, signed by a holder or holders of a majority of the said bonds, and a proper indemnification by the said holders to the trustees against the costs and expenses to be by them incurred, it shall be the duty of the trustees to enforce the rights of the bondholders under these presents by entry, sale, or suit or suits in equity or at law, as they, being advised by counsel learned in the law shall deem most expedient for the interest of all holders of the said bonds.

It is mutually agreed by and between the parties hereto that the word "trustees" as used in these presents shall be construed to mean the trustees for the time being, whether both or either be original or new, and whenever a vacancy shall exist, to mean the surviving or continuing trustee, and such trustee shall, during such vacancy, be competent to exercise all the powers by these presents reserved or granted to the parties of the second part.

And it is mutually agreed by and between the parties hereto
46 that neither of the said trustees shall be in any manner responsible for any default or misconduct of the other; that the said trustees shall be entitled to just compensation for all services which they may hereafter render in their trust, to be paid by the said company or out of the income of the property, and for that purpose may at any time apply to the courts without notice to any person but the said Atlantic and Gulf Railroad Company; that either of said trustees, or any successor may resign and discharge himself of the trust created by these presents by notice in writing to the said company and to the existing trustee, if there be such, three months before such resignation shall take effect, or such shorter time as they may accept as adequate notice, and upon due execution of the conveyances hereinafter required; that the said trustees or either of them may be removed by a vote of a majority in interest of the holders of the aforesaid bonds, the said vote being had at meetings duly held by the said bondholders, and
47 attested by an instrument under the hands of the persons so voting, that in case at any time hereinafter either of the said trustees, or any trustee hereafter appointed, shall die, or resign, or be removed, as herein provided, or by a court of competent jurisdiction, or shall become incapable or unfit to act in the said trust, a successor to such trustee shall be appointed by the surviving or continuing trustee, with the consent of the holders, for the time being, of a majority in interest of the said bonds then outstanding, and the trustee so appointed, with the trustee so surviving or continuing, shall thereupon become vested with all the powers, authorities, and estates reserved by, granted to, or conferred upon the parties of the second part by these presents, and all the rights and interests requisite to enable them to execute the purposes of this trust, without any further assurance or conveyance, so far as such effect may be lawful; but the

surviving or continuing trustee and the party of the first part shall execute all such conveyances and other instruments as the counsel of said trustees may reasonably advise, for the purpose of assuring the legal estate in the premises jointly with said surviving trustee to the trustee so appointed. And upon the death, resignation, or removal of any trustee, or any appointment in his place in pursuance of these presents, all his powers and authorities by virtue hereof shall cease, and all the estate, right, title, and interest in the said premises of any trustee so dying, resigning, or being removed shall wholly cease and determine, but the said trustee so resigning or being removed shall, on the written request of the new trustee who may be appointed, immediately execute a deed or deeds of conveyance to vest in such new trustee jointly with the continuing trustee, and upon the trusts herein expressed, all the property, rights, and franchises which may be at that time held upon the said trusts; provided, nevertheless, and it is hereby declared and agreed, that in case it shall at any time hereafter prove impracticable, after reasonable exertions, to appoint, in the manner hereinbefore provided, a successor in any vacancy which may have happened in said trust, application in behalf of all the holders of the bonds secured hereby may be made by the surviving or continuing trustee, or if the trust be wholly vacant, by holders of the bonds secured hereby to the aggregate amount of one hundred thousand dollars to any circuit court of the United States, or to any other court of competent jurisdiction for any judicial district in which any part of the aforesaid railroad may be situate, for the appointment of a new trustee or new trustees.

And the said party of the first part, for itself and its successors, in consideration of the premises, and of one dollar to it in hand paid by the said parties of the second part to these presents, the receipt whereof is hereby acknowledged, hereby covenants and agrees to and with the said parties of the second part to these presents, and the survivor of them, and the persons who shall or may be trustees for the time being, under or by virtue of these presents, that the said party of the first part and its successors shall, and will at all times hereafter, perform and keep all and every the conditions, covenants, agreements, and provisions herein contained, to be by the said party of the first part observed, performed, or kept, and that if any default shall be made in the covenants, agreements, or provisions herein contained, or in any of them, a decree for specific performance may be obtained, and pending the application therefor one or more receivers shall, in the discretion of the trustees, be appointed; and such other or further equitable relief may be had as shall be proper and adequate in the premises. And the said party of the first part, for itself and its successors, in consideration of the premises, and of one dollar to it duly paid by the said parties of the second part, the receipt whereof is hereby acknowledged, further covenants and agrees to and with the said parties of the second part, *the receipt whereof is hereby acknowledged, further covenants and agrees to and with the said parties of the second part*, and the survivor of them, and his or their successor or successors, that wherever and as often as the said party of the first part, or its successors, shall hereafter acquire any lands or any equipment or any other property or things, of whatever name or nature for use in connection with the railroad hereinbefore mentioned, or any part thereof, *or any part thereof*, or of any of its equipments or appurtenances, or shall acquire any franchises, including any franchise to be a corporation, which may be hereafter granted to the said com-

pany, the said party of the first part and its successors, shall and will acquire, possess, and hold the same, and each and every thereof, upon and subject to the trusts and powers by these presents reserved, granted, declared, or created until conveyances thereof in pursuance of the covenant next hereinafter contained, shall be duly made and delivered to the said trustees.

And the said party of the first part, for itself and its suc-
52 cessors, in consideration of the premises, and of one dollar to it duly paid by the said parties of the second part, the receipt whereof is hereby acknowledged, hereby further covenants and agrees to and with the said parties of the second part and the survivor of them, and their or his successor or successors, that the said party of the first part and its successors shall and will, from time to time, and at all times hereafter, and as often as thereunto requested by the trustees, or by the surviving or continuing trustee, or their or his successor or successors, execute, deliver, and acknowledge all such further deeds, conveyances, and assurances in the law for the better assuring unto the said trustees, or to the surviving or continuing trustee, or their or his successors or successor, the railroad, its equipments, and appurtenances hereinbefore mentioned or intended so to be, and all and other property and things whatsoever, which may be hereafter acquired for use in connection with the same or any part thereof, and all franchises now held or hereafter acquired, including any *fran-*
53 franchise to be a corporation, as by the said trustees, or by the surviving or continuing trustee, or their or his successor, or by their or his counsel learned in the law shall be reasonably advised, devised, or required.

And the said party of the first part, for itself and its successors, in consideration of the premises, covenants and agrees to and with the parties of the second part, and the survivor of them, and to and with their and his successors and successor in the trust hereby created or declared, that it, the said party of the first part, and its successors, shall and will, at all times hereafter, keep an office or agency in the city of New York for the payment of the principal and interest of and upon the bonds hereinbefore recited and described as the same shall become payable, and that any and every default in the due performance of this covenant shall be deemed and taken to be a waiver of presentment, and demand of payment of all and every of the
54 bonds and coupons aforesaid, which may become payable during the continuance of such default.

And it is hereby agreed between the parties to this indenture that in the meantime, and until default shall be made in the payment of the interest or principal of the said bonds, or of some of them, or in some of the covenants or agreements herein contained to be kept by the said party of the first part, it shall be lawful for the said party of the first part, and its successors, peaceably and quietly to have, hold, use, possess, and enjoy the said premises with the appurtenances, and to receive the incomes, tolls, rents, issues, and profits thereof to their own use and benefit, without any hindrance or interruption, suit, or disturbance whatsoever, lawfully claiming or to claim the same by, from, or under them, or any of them.

In witness whereof the party of the first part has caused its common seal to be hereto affixed, and the same to be subscribed by its
55 president and secretary, and the parties of the second part have

hereunto set their hands and seals the day and year first above written.

Filed February 15th, 1877. James McPherson, clerk.

56 And afterwards, on the 19th day of February, A. D. 1877, the following order was made, in the words and figures following, to wit:

Order appointing receivers.

This cause in respect to the application for the appointment of a receiver or receivers according to the prayer of said bill came on to be heard in pursuance of notice duly served, and was argued by counsel for complainant, and by consent for defendant.

And thereupon consideration thereof it was ordered, adjudged, and decreed as follows, to wit:

1st. That John Screven, of the city of Savannah, and State of Georgia, and Samuel A. Strang, of the city and State of New York, be, and they are hereby, appointed receivers of the entire property and effects embraced in this trust deed or mortgage set forth in complainant's bill, that is to say, all and singular, the railroad of the said The Atlan-
57 tic and Gulf Rail Road Company extending from Savannah to Bainbridge, and the said branches thereof, extending respectively from Dupont to Live Oak, in the State of Florida, and from Thomasville to Albany, and from the depot in the city of Savannah to the wharves on the Savannah River, including said wharves, and the said branch called the Junction Railroad connecting the main line with the Savannah and Charleston Railroad, together with all the franchises, lands, buildings, machinery, rolling stock, materials, and other property, real and personal, wherever situated, and in whatsoever manner held, of said railroad and branches respectively, and the rents, issues, profits, tolls, and income of all and singular said railroad and branches, and all other the properties, rights, interests, and franchises mentioned in and purporting to be conveyed or covered by the said trust deed or mortgage executed to the said Morris K. Jesup and John R. Gardner, and to the survivor
58 of them as trustees, and that the same may be reduced to actual possessions by the said receivers as soon as may be.

2. To the end that said receivers may be clothed for the time being with complete title, legal and equitable, the said company, as well as the said surviving trustee, Morris K. Tesup, named in the bill, be, and they are hereby, required to execute jointly or severally an assignment or assignments conveying all said property and effects to said receivers, to be held by them subject to the order and disposition of this court in this suit, which assignment or assignments the said company and the said surviving trustee are hereby ordered and directed to deliver, properly executed, to said receivers, or to some duly constituted agent, on demand.

3. That said receivers, until further ordered, shall manage and keep in operation the said railway and branches, and shall con-
59 tinue to operate the same as an efficient line of transportation and travel, and to make settlements with and payments to other lines of transportation and travel in the usual course of such business, and employ for that purpose all necessary agents and servants of every kind, receive and collect all the debts and assets due the said corporation, receive and collect all the earnings and incomes, pay off all current

expenses arising after they take control, and settle all legal and just claims for damages or injuries to persons or property sustained under their management, and that they hold subject to further order any surplus money coming to their hands.

4th. That proper vouchers be taken and kept in all cases for expenditures and disbursements, and that a full and detailed report of each month's transactions be filed in the clerk's office within ten days after the close of the month.

5th. And the said receivers are hereby authorized to continue
60 the employment of the counsel engaged in defending and prosecuting the causes now pending in the various courts of law or of equity in which the said Atlantic and Gulf Railroad is either plaintiff complainant or defendant.

And the said receivers are further authorized to employ counsel and attorneys as they may deem necessary to manage such suits as may hereafter arise and to give advice to such receivers in relation to the performance of their duties herein, provided the said last named counsel or attorneys shall not at the time of such service be engaged as the counsel or attorneys of either the complainant or the defendant in this cause.

6. In case of the death, or removal, or failure of either of said receivers to qualify by giving the bond provided for in this order, all the duties prescribed in this order for both shall be performed by the remaining receiver until the further order of this court, and neither one of
61 said receivers shall be held responsible for the acts, misconduct or default of the other.

7. That the rights, powers, and authority of each receiver shall take effect as soon as a bond in the sum of seventy-five thousand dollars, with not less than two sureties, who (the said sureties) must justify before a United States commissioner or the clerk of this court, shall be filed by each of said receivers in the clerk's office, the bonds to be respectively approved by said clerk, and to be conditioned for the faithful performance of the receiver's duties, and for a faithful accounting for all money and property coming to his hands.

Feb'y 19, 1877.

JOHN ERSKINE,
U. S. Judge.

62 And afterwards, to wit, on the 20th day of April, A. D. 1877, the following order was made, to wit:

Order confirming receivers.

This cause in respect to the application for the appointment of a receiver or receivers according to the prayer of the original and supplemental bills, and the petition of the said receivers already appointed, came on to be further heard in open court this twentieth day of April, eighteen hundred and seventy-seven, and during the April term of said court, and upon hearing Mr. W. S. Chisholm, solicitor and counsel for the complainant, and Mr. Robert Falligant, solicitor and counsel for the defendant, The Atlantic and Gulf Railroad Company, and Mr. A. R. Lawton, solicitor and counsel of the receivers, it is now ordered by this court that the appointment of John Screven of the city of Savannah, in the State of Georgia, and Samuel A. Strang, of the city and State of New York, as receivers of all and singular the
63 property and effects of the said defendant embraced in the said

trust deed or mortgage attached as an exhibit to complainant's original bill, and which said appointment was made by this court at chambers on the 19th day of February, 1877, be, and the same is hereby, confirmed and continued except as hereinafter modified.

And it is further ordered that the said receivers shall continue pending the litigation and until the further order of this court, to hold, use, run, and operate the said railroad and branches, and their appurtenances, and exercise the franchise pertaining thereto for the common carriage of freight and passengers, keeping the premises and property, both real and personal, in good condition and repair, to the end that said road may be operated efficiently and with safety to the public, and shall collect and receive all tolls, freights, incomes, rents, issues, and profits;

64 that they, as such receivers, have authority to employ, pay, and discharge, from time to time, in their discretion, all needful laborers, servants, agents, attorneys, and counsel, to purchase and pay for all needful supplies, to settle and adjust with other roads all traffic balances in the usual course of business; to make from time to time, in their best discretion, all needful and proper traffic arrangements with other roads and common carriers for the interchange of business; to pay all lawful taxes upon the property whereof they are appointed receivers that may be due and payable, or become due and payable during this receivership; to prosecute and defend, without the further order of this court, if they shall deem it expedient and for the interest of their trust, all existing actions by or against said company, and to pay all expenses and fees incident thereto. And to defend all actions that may be hereafter brought against said company, or against themselves as such receivers, and to pay the expenses and fees of such prosecution and defense, and also to pay the expenses and disburse-

65 ments of the complainant trustee, and the fees, expenses, and disbursement of his counsel and solicitor in and about the appointment of the said receivers, and also the expenses and disbursements of the defendant, and the fees, expenses, and disbursements of its counsel and solicitors in and about the said appointment of said receivers; to use the name of the said company in the prosecution of all such actions as they may find it proper in their discretion to bring, maintain, or defend; to do whatever may be needful and proper to maintain the corporate organization and franchises of the company until the further order of this court, and to pay and expend such sums and no more for the protection of said corporate organization and franchises as may be hereafter upon application and hearing ordered by this court.

And for the purpose last aforesaid, upon the petition of the said receivers, it is ordered that they, or either of them, be authorized to

66 pay and take up the coupons of the first mortgage bonds of the South Georgia and Florida Railroad Company, guaranteed by the State of Georgia, which will fall due on the first day of May, A. D. eighteen hundred and seventy-seven, and also to pay any part due coupons of said first mortgage bonds which remain unpaid where there is no question as to the title of the holder or the validity of the coupon—the entire issue of said first mortgage bonds being four hundred and sixty-four thousand dollars.

And it is further ordered for the purposes aforesaid that the said receivers be authorised to pay the coupons for interest on the second mortgage bonds of said South Georgia and Florida Railroad Company, the entire issue being four hundred thousand dollars, which coupons fell due May the first, eighteen hundred and seventy-seven, and also to

pay any part due coupons of said second mortgage bonds where
67 there is no question as to the title of the holder or the validity of the coupon, provided that the suit instituted in this court by the trustees under said second mortgage bonds against the complainants, Morris K. Jesup, trustee, as aforesaid, the said defendant, The Atlantic and Gulf Railroad Company and others, be discontinued or otherwise disposed of in the interest of the bill filed by the said complainant or of the said defendant, The Atlantic and Gulf Railroad Company.

And it is further ordered that the said receivers be also authorised to pay the coupons or interest on the bonds mentioned in said original and supplemental bills, commonly known as sectional bonds, which will become due on the first day of July, eighteen hundred and seventy-seven, the entire issue of said bonds still outstanding being three hundred and thirty-four thousand dollars, and also to pay any past due coupons of said sectional bonds, where there is no question as to the title of the holder or the validity of the coupon.

68 And it is further ordered that should the said receivers not be in funds at the dates when said coupons for interest shall fall due, or when said past due coupons shall be presented, that they, or either of them, be authorised to issue certificates of indebtedness as receiver or receivers, and to borrow money on the same for such an amount of the said interest as will be in excess of the funds then in his or their hands as receiver or receivers.

And it is further ordered that the said receivers shall keep a separate account of the tolls, freights, and income derived from the said Junction Branch Railroad, and from said separate fund pay the interest or coupons upon the said bonds issued for the construction of said Junction Branch Railroad at the days and times upon which the same shall become respectively due.

It is further ordered that the said receivers, or either of them, be authorized to deposit in any chartered bank in the city of Savan-
69 nah such funds as have already or may hereafter come into their hands or the hands of either of them as receivers, and to draw the same out by their check or checks or by the check or checks of their duly authorized agent or attorney.

And it is further ordered that the time for the filing of the statement for each month's transactions be extended from ten to twenty-five days after the first of each month.

And it is further ordered that either of the parties to this suit, upon notice in writing to the other party, and to the said receivers, or the said receivers, upon notice to the parties to this suit, may at any time and from time to time apply to the court for further orders or directions in relation to the said receivership or the administration thereof, or effecting the subject-matters embraced therein, provided that such notice shall be served at least ten days previous to the application, unless shorter notice be in writing accepted, which notice shall be
70 served either personally upon the parties to be notified or served upon their solicitors, in accordance with the practice of this court.

And it is further ordered and declared that the making of this order or the acquiescence of the said The Atlantic and Gulf Railroad Company in the making thereof shall not be deemed to preclude the said railroad company from setting up any defense it might otherwise make against the foreclosure of the mortgage held by the complainant, as surviving trustee, which is in the bill and supplemental bill set forth,

or the sale of the said mortgaged premises thereunder, or against the final decree or relief prayed by the complainant's bill and supplemental bill, nor any part thereof, nor in anywise prejudice the said railroad company in respect of any such defense which it might otherwise make upon the final hearing or trial of this suit upon the merits.

JOHN ERSKINE,
U. S. Judge.

71 And afterwards, to wit, on the 20th day of April, A. D. 1877, came the complainant by W. S. Chisolm, esq., his solicitor, and filed his supplemental bill in the said words and figures following, to wit:

Supplemental bill.

To the honorable the judges of the fifth circuit court of the United States for the southern district of Georgia:

Humbly complaining sheweth unto your honors, your orator, Morris K. Jesup, who avers himself to be a citizen of the State of New York, surviving trustee as hereinafter mentioned. That your orator on the day of , 1877, exhibited his original bill of complaint in this honorable court against The Atlantic and Gulf Railroad Company, whom your orator avers is a citizen of the State of Georgia, and has its principal place of business within said southern district, which said original bill alleged and aver'ed:

72 That your orator is a citizen of the State of New York, and that the said defendant, The Atlantic and Gulf Railroad Company, is a railroad corporation created by, and organized and existing under the laws of the State of Georgia, and having its principal office and place of business within the southern district of Georgia. That on or about the twentieth day of December, eighteen hundred and sixty-seven, the said The Atlantic and Gulf Railroad Company, being thereunto duly authorized and empowered by and under its charter and the laws of the State of Georgia, and being the owner and possessor of certain railroad in said State, extending from the city of Savannah to Bainbridge, in said State of Georgia, a distance about two hundred and thirty-seven miles, and a branch thereof running from Dupont on the main line to the State line between Georgia and Florida, and there connecting the leased line hereinafter mentioned, together with the appurtenances of said

73 main line and branch and the rolling-stock or equipments thereunto belonging, and also the leasehold interest in a certain other railroad extending from the State line between Georgia and Florida to Live Oak, in the State of Florida, a distance of sixteen miles or thereabouts, with the appurtenances and equipments thereof, held by the said Atlantic and Gulf Railroad Company under lease from the Pensacola and Georgia Railroad Company, and also the other things embraced in and purpo'ting to be covered by the mortgage deed hereinafter mentioned, duly made and executed under the corporate seal of the said The Atlantic and Gulf Railroad Company, with the signatures of its president and secretary attesting, and delivered unto your orator and one John R. Gardner, then residing in the city of New York, and a citizen of the State of New York, and now deceased, its certain indenture of mortgage or deed of trust to your orator and said John

74 R. Gardner as trustees, bearing date on said twentieth day of December, eighteen hundred and sixty-seven, whereby the said The Atlantic and Gulf Railroad Company conveyed in mortgage unto

your orator and said John R. Gardner, and the survivor of them, and his and their successors and assigns forever, the aforementioned railroad owned and possessed by said company, extending from Savannah to Bainbridge, with the aforementioned branch from Dupont to the State line, together with the appurtenances and rolling-stock and equipments thereof respectively and its said leasehold interest in the said railroad extending from the State line to Live Oak, with the appurtenances and equipments thereof, together with the income, tolls, rents, issues, and profits of both said railroads and the franchises, rights, and privileges belonging or appertaining to the same respectively, and the other things embraced and purpo'ting to be conveyed by said mortgage or deed of trust; to be had and holden by your orator and the
75 said John R. Gardner, and the survivor of them, and their or his heirs, successors, and assigns forever, in trust to secure the principal and interest of certain bonds, then proposed to be issued, negotiated by said railroad company to the aggregate amount of two millions of dollars in bonds for one thousand dollars and for five hundred dollars each, all dated December twentieth, eighteen hundred and sixty-seven, bearing interest at the rate of seven per cent. per annum from July 1st, 1867, payable semi-annually on the first day of January and July of each year, at the agency of said railroad company, in the city of New York, or at their office, in the city of Savannah, at the option of the holder, and the principal payment on the first day of July, eighteen hundred and ninety-seven (a copy of which said indenture of mortgage or deed of trust is to said original bill annexed in the
76 schedule marked H, and is made a part of said bill).

And your orator further sheweth that said original bill further alleged "that the execution of said indenture of mortgage or deed of trust by the said The Atlantic and Gulf Railroad Company was afterwards duly acknowledged and authenticated according to the laws of the State of Georgia, so as to entitle the same to be recorded, and the said indenture of mortgage or deed of trust was afterwards duly recorded in accordance with the laws of the State of Georgia."

And your orator further sheweth that said original bill also alleged "that the said John R. Gardner died in or about the month of December, eighteen hundred and seventy-one, and no successor of the said John R. Gardner in the trusteeship created by or under said indenture of mortgage or deed of trust has ever been appointed, and your orator, as the sole surviving trustee, is now vested with the entire
77 estate, and with the trusts, rights, and powers under the indenture, which were originally invested in him and in the said John R. Gardner."

And your orator further shews that said original bill further alleged "that after the execution of the above indenture of mortgage or deed of trust the said The Atlantic and Gulf Railroad Company duly made, executed, and issued, and negotiated, and transferred for full and valuable consideration by said railroad company received therefor, the bonds of the description and form and tenor in said indenture of mortgage provided for, and recited and intended and purporting to be thereby secured, to the aggregate amount of two millions of dollars in said indenture in that behalf, accompanied by the certificate of your orator and said Gardner as trustees, and with coupons for the interest
78 thereon annexed there in the form provided for in said indenture, excepting only the bonds to the aggregate amount of three hundred and thirty-four thousand dollars remain unissued, and have been reserved from issue and negotiation because a corresponding amount of

the prior sectional mortgage bonds having liens upon particular sections of the said railroad, and which were designed to be provided for by means of so-called consolidated bonds issued under the said mortgage to your orator and said John R. Gardner, have *as* not as yet taken up, but still remain outstanding, and have prior liens upon the respective portions of said railroad covered thereby; but that the remainder of the said bonds issued under and secured by the said mortgage or deed of trust to your orator and said John R. Gardner, that is to say, such bonds to the aggregate amount of sixteen hundred and sixty-six
79 thousand dollars of principal now remain outstanding, and in full force and effect in the hands of the respective parties to whom the same have been duly negotiated, and who are the owners and holders thereof for value, and the holders of said bonds, who are very numerous, and your orator as surviving trustee as aforesaid in their behalf, are entitled to the benefit of the security provided by said mortgage or deed of trust."

And your orator further sheweth that said original bill further alleged "that the said The Atlantic and Gulf Railroad Company has made default in the performance of the conditions and stipulations contained in the said indenture of mortgage or deed of trust, and in the said bonds for sixteen hundred sixty-six thousand dollars, issued thereunder and secured thereby, and now outstanding as aforesaid."

80 And your orator further sheweth that the said original bill also alleged "that the said railroad company wholly failed to pay or to make any provision for the payment of either at said company's office or agency in the city of New York, or in the city of Savannah, or elsewhere, or otherwise, however, the six months interest in the said outstanding bonds for sixteen hundred and sixty-six thousand dollars, which became due and payable on the first day of January, eighteen hundred and seventy-seven, but has admitted and announced its inability to pay such interest; and that on the second day of January, eighteen hundred and seventy-seven, the first day of January being a legal holiday in New York, the interest coupons falling due on the said first day of January, upon a large amount of the said outstanding bonds, for sixteen hundred and sixty-six thousand dollars, issued
81 under and secured by said mortgage or deed of trust were duly presented for payment at the said company's office or agency in the city of New York, and payment thereof was duly demanded, and such payment was refused for want of funds, and the said interest coupons remain wholly unpaid and in default, and that the am't of interest now in arrear and unpaid upon the said outstanding bonds for sixteen hundred and sixty-six thousand dollars, issued under and secured by said mortgage or deed of trust, is fifty-eight thousand and three hundred and ten dollars; and by reason of such default made in the conditions of said mortgage or deed of trust, it has become your orator's duty as trustee to enforce the security of said mortgage or deed of trust upon the property and franchises embraced in and covered by said mortgage or deed of trust for the benefit and security of said bondholders for whom your orator is trustee."

82 And your orator further sheweth that the said original bill also alleged "that after the execution of the said mortgage or deed of trust to your orator and the said John R. Gardner, the said The Atlantic and Gulf Railroad Company purchased and became the owner and they still own the railroad with its appurtenances extending from the State between Georgia and Florida to Live Oak in the State of Florida, a distance about sixteen miles, which had been leased to the

said The Atlantic and Gulf Railroad Company by the Pensacola and Georgia Railroad Company by the indenture of lease dated November nineteenth, 1867, which lease was embraced and covered by said indenture of mortgage or deed of trust to your orator and said John R. Gardner; and such railroad line in Florida between the State line and Live Oak has been and is used and operated together with the
83 branch of the said Atlantic and Gulf Railroad Company, situate in the State of Georgia, extending from Dupont on the main line of the Atlantic and Gulf Railroad, a distance of thirty-two miles, or thereabouts, to the point of connection on the State line between Georgia and Florida; and there is thus formed, and has been, and is being operated by the said The Atlantic and Gulf Railroad Company a continuous line of railroad about forty miles in length, extending from Dupont in Georgia to Live Oak in Florida, running as a branch of and in connection with the main line of the Atlantic and Gulf Railroad between Savannah and Bainbridge; and the freight and passenger business of said branch line to Live Oak, as thus connected, forms a very important and valuable portion of the through freight and passenger business of the said Atlantic and Gulf Railroad, having as well a
84 local business, and constitutes an important portion of the security of the bondholders for whom your orator is trustee as aforesaid.

And your orator further showeth that said original bill further alleged "that in addition to the before-mentioned line from Savannah to Bainbridge, and the said branch from Dupont to Live Oak, the said The Atlantic and Gulf Railroad Company also possesses, owns, and operates, in connection with and as part of its said railroad the following-described other lines of railroad situate in the said State of Georgia; that is to say, a branch of its railroad about fifty-eight miles in length, extending from Thomasville, on the main line between Savannah and Bainbridge, to Albany, in the county of , in said State of Georgia, which said branch formerly belonged to the South Georgia and Florida
85 Railroad Company; to a lien of the State of Georgia, created before said road became the property of the Atlantic and Gulf Railroad Company, and which paramount to its title for the principal and interest of certain bonds to the amount of six hundred and sixty-four thousand dollars, or thereabouts, and likewise two short branches used in connection with and as part of said main line, viz, one of about two miles in length, extending from the depot, in the city of Savannah, to the wharves on the Savannah River, including such wharves, this branch being subject to a purchase-money mortgage of thousand dollars, or thereabouts; and one of about four miles in length, known as the junction branch, connecting the main line aforesaid with the Savannah and Charleston Railroad, this branch being subject to a purchase-money mortgage of fifty thousand dollars, or thereabouts."

86 And your orator further sheweth that the said original bill further alleged "that the before-mentioned and paramount lien upon the branch line from Thomasville to Albany, for six hundred and sixty-four thousand dollars and interest or thereabouts, is accompanied by a right of the State of Georgia to enter upon and take possession of the said line of said railroad with its appurtenances in case of default being made in the due payment of the interest upon such bonds as it falls due; that such interest is payable semi-annually and a semi-annual installment upon said bonds or upon a large portion thereof will fall due on the 1st day of May next.

"That the said branch line between Albany and Thomasville is very

important and valuable portion of the railroad line of the said Atlantic and Gulf Railroad Company, and contributes by its business a
87 large and important portion of the through freight and passenger business of the said main line, which would be liable to be diverted to another line of transportation in case the said branch line to Albany should pass out of the control of the Atlantic and Gulf Road Company, or the representatives of its title and interest, and such branch line, with its connections and the business flowing to the main line therefrom, constitutes a very important and valuable portion of the security of the bondholders for whom your orator is trustee, and the maintenance of said branch under the control of said Atlantic and Gulf Railroad Company, or the representatives of its title and interests and the continued and uninterrupted operation of such branch in connection with and as a part of said main line, are essential to the due preservation of the security of said bondholders."

88 And your orator further sheweth that said original bill further alleged "that they still remain outstanding and in full force and effect mortgage bonds to the amount of three hundred and thirty-four thousand dollars, besides interest, parcel of the sectional mortgage bonds refer'ed to in the said mortgage to your orator and said John R. Gardner, and which were intended to be provided for and taken up out of the proceeds of bonds issued under that mortgage, which constituted liens prior and paramount to the lien of the before-mentioned mortgage held by your orator as surviving trustee, upon sections or portions of the said railroad covered by the said mortgage held by your orator; and that these outstanding sectional bonds, or at least the great portion thereof, and the mortgage or mortgages whereby the same are secured, are so conditioned that if the semi-an-
89 nual interest falling due thereon is suffered at any time to remain in arrear and default for ninety days, the principal of said bonds is liable to become presently due and payable at the option of the holders of said bonds, although the term originally fixed for the payment of such principal is yet far distant. That on the first day of January, eighteen hundred and seventy, the semi-annual interest fell due upon three hundred and thirty-four thousand dollars, or thereabouts, of these outstanding sectional mortgage bonds, which have the special condition last above stated; that said railroad company wholly made default in such interest, and the same remains in arrear and unpaid; that if, by reason of ninety days' continuance of such default, the principal of said bonds should be suffered to become due, the security of the bondholders for whom your orator is trustee would be very seriously jeoparded and prejudiced, and great and irreparable loss
90 and prejudice would result therefrom to the said railroad company and its other creditors, and all parties in interest, other than said prior sectional bondholders."

And your orator further sheweth that said original bill also alleged, "that besides the mortgage and secured debts hereinbefore particularly set forth, the said company has a large unsecured floating debt, the amount whereof, according to the best information which your orator has been able to obtain, and, as he verily believes, is about five hundred and forty-seven thousand dollars; and besides this the said company is indebted upon so-called coupons notes to the amount of five hundred thousand dollars falling due in the month of April, eighteen hundred and seventy-seven, which are collaterally secured by a deposit in trust of so-called second mortgage bonds of said railroad com-

pany to the amount of one million of dollars, which are subject
91 in date to the said mortgage held by your orator as trustee."

And your orator further sheweth that said original bill also alleged "that, according to the best knowledge and information, after diligent and careful inquiry, and, as he verily believes to be true, there are included in the unsecured floating debt of said railroad company hereinbefore referred to, the following-named sums of indebtedness and of the description following; that is to say, the said company's notes or bills payable to about the amount of two hundred thousand dollars—arrears of wages to employees commonly called 'pay-rolls' to about the amount of eighty-four thousand dollars; obligations of said company, commonly called 'fare bills,' purporting to be receivable in payment of freights and passenger fares due to the company, amounting to about seventy thousand dollars; arrears of divi-
92 dends due of guaranteed stock for which said company is liable to suit and recovery of judgment and upon a debt amounting to about one hundred and thirty-two thousand dollars, besides a large amount of other indebtedness in the shape of bills for supplies, open accounts, and otherwise."

And your orator further sheweth that said original further alleged "that said company possesses at present but a small amount of cash, funds or other available means and cannot or could not expect to and will not possess in the near future and considerable addition to its cash means or reserves other than such net income as it might be able to obtain from the operation of its railroad over and above the expenses of maintaining and operating its railroad; and such cash and other available means at present and for the immediate future are necessary and will be wholly insufficient to enable it to meet its pecuniary obli-
93 gations and continue its business, and said railroad is in a state of great pecuniary embarrassment. That it is essential to the security of the bondholders for whom your orator is trustee, as aforesaid, and to the maintenance of their rights and interest and also greatly to the interest of the other bona fide creditors of said company whether secured or unsecured, and to the interest of all legitimately concerned in the premises that the before-mentioned line of the said Atlantic and Gulf Railroad, including the several branches as hereinbefore mentioned which have been accustomed to be and are now being used and operated in connection with said main line as aforesaid, should continue to be maintained, used, and operated as one entire railroad enterprise as hitherto, and that no interruption or dislocation of the freights or passenger business thereof should be at all permitted to occur, and if any such interruption was permitted there would be serious danger of
94 *of* consequent diversion of the currents of business into other channels with lasting effect, and the value of the said railroad with its appurtenances so mortgaged to your orator as trustee for said bondholders, secured thereby, be seriously interfered with, prejudiced, and deteriorated to the great and irreparable loss and damage of the said bondholders for whom your orator is trustee, as well as to the great jeopardy and loss of the other bona fide creditors, and other interest legitimately involved, and thereby also the income of said railroad, which by the said mortgage is also hypothecated to your orator as trustee for said bondholders, would be greatly impaired and deteriorated, to the great and irreparable loss and damage of your orator and the bondholders for whom he is trustee; and to the end aforesaid, and for the protection and preservation of the rights and interests of your orator as trustee and of the bond-

holders in whose behalf he is trustee, it is likewise and especially
95 essential that such means should be seasonable taken as may avoid the falling due and consequent enforcement of payment of the principal of the said prior sectional mortgage bonds to the amount of $334,000, and likewise such measures as may avoid giving occasion to the State of Georgia to enter upon and take possession of the branch line from Thomasville to Albany, as a consequence of default in the interest upon the said bonds for six hundred and sixty-four thousand dollars, being the paramount lien upon that branch.

And your orator further sheweth that said original bill further alleged, "that in consequence of the default made by said railroad company in the payment of its mortgage interest as aforesaid, in connection with its pecuniary condition, in other respects the credit of the said company has become broken down; that a large amount of said *in*secured floating debts is already part due, and the residue
96 will be rapidly and constantly falling due, and it is and will be impossible for said company to maintain its credit, or longer carry along successfully such floating unsecured debt, that by the laws and usages in the State of Georgia the sums due and owing from time to time becoming due and owing to said railroad company, for the freights and earnings of its railroad, and accumulating in the hands of parties with whom it has connection, or otherwise outstanding as debts due and owing to said company, are, and will be from time to time liable to seizure upon garnishment or attachment by parties holding unsecured floating debts against said company, who may choose to commence suit for the recovery thereof, thus depriving the company of the cash means absolutely necessary in order to current expenses and continue the operation of the road; that not the freights and earnings, but also the tangible personal property of said company, wherein the
97 State of Florida or elsewhere out *out* of Georgia in the necessary *cau*'se of carrying on the company's transportation business are and will be subject to seizure and attachment by floating debt creditors who may choose to commence suit or legal proceedings for recovery of their claims; and that under the existing circumstances the said railroad company cannot safely or successfully operate its road and carry on its transportation and other business; and that it is essential to the security and protection and preservation of the rights and interests of the bondholders for whom your orator is trustee, as well as for the general interest of the other bona fide creditors of said company, and of all others legitimately concerned in the premises, that without delay a receiver or receivers should be appointed by this court of all and singular the railroad of the said The Atlantic and Gulf Railroad Company, including the several branches thereof aforesaid. with the appurtenances and rolling stock, and equipments thereof,
98 and the rents, issues, profits, tolls, and income of the said road and branches and all the other property, rights, and interest mentioned in the said mortgage or deed of trust held by your orator as surviving trustee as aforesaid, and that the said railroad company should be ordered and directed to assign, transfer, and deliver over all and singular the same to such receiver or receivers to be had and holden subject to the order of this court in the premises, to the end and purpose that the said railroad and branches may be continued to be used, run, and operated, and the income thereof to be received by such receiver or receivers without disturbance or interruption; and that the net income accruing therefrom while under such receivership may be applied and disposed of by the order and under the directions of this court for the pro-

tection and preservation of the said property, and in such man-
99 ner as shall be expedient for the interest of those concerned, and agreeable to the legal and equitable rights of your orator and the bondholders for whom he is trustee, and of all parties legitimately concerned or interested in the premises."

And your orator further says that it was by said original bill prayed that, "to the end therefore that the said defendant, The Atlantic and Gulf Railroad Company may answer on oath, according to the practice and cau'se of this court, all and singular the premises, and that as your orator now prays by the order of this court and pending this suit a receiver or receivers may be appointed of all and singular the before mentioned railroad of The Atlantic and Gulf Railroad Company extending from Savannah to Bainbridge, and the said branches thereof extending, respectively, from Dupont to Live Oak and from Thomasville to Albany, and from the depot in Savannah to the wharves on the Savannah River, including said wharve sand the said branch called the Junction Railroad,
100 connecting the main line with the Savannah and Charleston Railroad, and the appurtenances and equipments or rolling stock of said railroad and branches, respectively, and the rents, issues, profits, tolls, and income of all and singular said railroad and branches, and all other the properties, rights, and interests mentioned in and purporting to be conveyed or covered by the said mortgage or deed of trust executed to your orator and said John R. Gardner, as trustees, to be had and holden by said receiver or receivers subject to the order of this court in the premises, and with such order and directions to said receiver or receivers from time to time in relation to the maintenance and management and operation of said railroad and branches, and the application of the income and earnings thereof, and the management and disposition of all the property in such receivership as to the company seems fit, and agreeable to equity, and that the said defendant,
101 The Atlantic and Gulf Railroad Company may be ordered and compelled to assign and transfer, in proper and effectual form to the said receiver or receivers, all the property, rights, interests, and things embraced in such recei'rship, and that an account may be taken of the amount due and owing on the outstanding bonds which are entitled to the benefit of the security of the said mortgage held by your orator as surviving trustee as aforesaid, and that the said The Atlantic and Gulf Railroad Company may be adjudged and decreed by some short day, to be fixed for the purpose, to pay the same, and that in default of such payment, the said The Atlantic and Gulf Railroad Company, and all persons claiming under it subsequently to the commencement of this suit, may be barred and foreclosed from all equity of redemption and right, title, and interest in or to the said railroad and branches, with appurtenances and franchises and rolling stock or
102 equipments thereof, and other the properties, rights, and things embraced in or covered by said mortgage or deed of trust held by your orator as surviving trustee as aforesaid, and that all and singular the same may be sold under and according to the decree and under the direction of this court, and from the net proceeds of such sale there be paid the amount of principal and interest due or owing upon or secured by the outstanding bonds which are entitled to the benefit of the security of the said mortgage or deed of trust held by your orator as the surviving trustee, together with the cost and expenses of this suit and your orator's commission or compensation as trustee; and that your orator may have such further or such other order, decree, or relief in the premises as may be agreeble to law and equity.

And your orator further sheweth that the said defendant, The Atlantic and Gulf Railroad Company, on the day of , 1877, was
103 duly and legally served with proper subpœna in said suit; after which, upon the nineteenth day of February, the following order and decree was passed by the honorable John Erskine, judge, at chambers:

The cause in respect to the application for the appointment of a receiver or receivers, according to the prayer of said bill, came on to be heard in pursuance of notice duly served, and was argued by counsel for complainant, and by counsel for defendant, and thereupon, consideration thereof, it was ordered, adjudged, and decreed, as follows, to wit:

1. That John Screven of the city of Savannah, and State of Georgia, and Sam'l A. Strang, of the city and State of New York, be, and they are hereby appointed receivers of the entire property and effects embraced in this trust deed or mortgage set forth in complainant's bill, that is to say, all and singular the railroad of the said Atlantic
104 and Gulf Railroad Company extending from Savannah to Brainbridge, and the said branches thereof extending respectively from Dupont to Live Oak, in the State of Florida, and from Thomasville to Albany, and from the depot in the city of Savannah to the wharves on the Savannah River, including said wharves and the said branch called the Junction Railroad, connecting the main line with the Savannah and Charleston Railroad, together with all the franchises, lands, buildings, machinery, rolling-stock, materials, and other property, real and personal, wherever situated, and in whatsoever manner held by said railroad and branches respectively; and the rents, issues, profits, tolls, and income of all and singular said railroad and branches; and all other the properties, rights, interests, and franchises mentioned in and purporting to be conveyed or covered by the said trust deed or mortgage executed to the said Morris K. Jesup and John R. Gardner, and
105 to the survivors of them as trustees, and that the same be reduced to actual possession by the said receivers as soon as may be.

2. To the end that the said receivers may be clothed for the time being with complete title, legal and equitable, the said company as well as the said surviving trustee, Morris K. Jessup, named in the bill, he and they are hereby required to execute, jointly, and *or* severally, an assignment, or assignments, conveying all said property and effects to said receivers, to be held by the*ir* subject*s* to the order and disposition of this court in this suit, which assignment or assignments the said company and the said surviving trustee are hereby ordered and directed to deliver, properly executed, to said receivers or some duly constituted agent on demand.

3. That said receivers, until further ordered, shall manage and keep in operation the said railway and branches, and shall continue to operate the same as an efficient line of transportation and travel, and
106 to make set*set*tlements with and payments to other lines of transportation and travel in the usual course of such business, and employ*ment* for that purpose all necessary agents and servants of every kind; receive and collect all the earnings and incomes; pay off all current expenses arising after they take control of and settle legal and just claims for damages or injuries to persons or property sustained under their management; and that hold subject to further order any surplus money coming to their hands.

4. That proper vouchers be taken and kept in all cases for expenditures and disbursements, and that a full and detailed report of each

month's transactions be filed in the clerk's office within ten days after the close of the months.

5. And the said receivers are hereby authorized to continue the employment of the counsel engaged in defending and prosecuting
107 the causes now pending in the various courts of law or of equity, in which the said Atlantic and Gulf Railroad Company is either plaintiff, complainant, or defendant.

And the said receivers are further authorized to employ counsel and attorneys as they may deem necessary to manage such suits as may hereafter arise, and to give advice to such receivers in relation to the performance of their duties herein provided. The said last-named counsel or attorneys shall not, at the time of such service, be engaged as the counsel or attorneys of *the* either the complainant or defendant in this cause.

6. In case of the death or removal or failure of either of the said receivers to qualify by giving the bond required by this order, all the duties prescribed in this order for both shall be performed by the remaining receiver until the further of the court, and neither
108 one of the said receivers shall be held responsible for the acts, misconduct, or default of the other.

7. That the rights, powers, and authority of each receiver shall take effect as soon as a bond in the sum of seventy-five thousand dollars, with no less than two sureties, who' (the said sureties must justify before a United States commissioner or the clerk of this court) shall be filed by each of said receivers in the clerk's office; the bonds to be respectively approved by said clerk and to be conditioned for the faithful performance of the receiver's duties, and for a faithful accounting for all money and property coming to his hands.

And your orator further sheweth, that on the twenty-seventh day of March, eighteen hundred and seventy-seven, upon the petitions of the said receivers for that purpose, the following order was granted by the honorable John Erskine, judge, at chambers, to wit:

109 "On reading the foregoing petition, and duly considering the facts set forth, it 's ordered that the said receivers of the Atlantic and Gulf Railroad, John Screven and S. A. Strang, be, and are hereby, authorized to pay and take up the past-due coupons of bonds of said railroad company, secured by the three mortgages known as sectional mortgages, and to use any funds now or hereafter to come into their hands as receivers for that purpose.

"It is further ordered that said receivers be, and are hereby, authorized to purchase and lay down on said railroad five hundred tons of new rails of approved pattern, and to issue the notes or certificates of the receivers to the extent of the purchase-money of said rails."

And your orator further sheweth that the said defendant, The Atlantic and Gulf Railroad Company, on the second day of April,
110 1877, being the April rules day of this honorable court, filed its appearance in said suit.

And your orator further sheweth, by way of supplement, that it is provided by the terms of the said mortgage or deed of trust, to wit: First. In case default shall be made in the payment of the interest on any of said bonds according to the tenor thereof, or of the coupons thereto annexed, or in the payment of any principal of any of the said bonds when the same shall become due and be demanded; and if any such default shall continue for the period of sixty days, or, in case of any default in any requirement hereof, to be done or kept by the Atlantic and Gulf Railroad Company, and if any such default shall continue for

the period of sixty days, then, and in either case, the said John R. Gardner and Morris K. Jesup, or the survivor of them, or their or his successors in the trusts created or declared by this indenture,
111 personally or by their or his attorneys or agents may, or upon requisition of the holders of a majority of the bonds secured hereby shall enter into and upon all and singular the premises hereby conveyed or intended so to be, and each and every part thereof, and have, hold, and use the same, operating by their or his superintendents, managers, receivers, or servants, or their attorneys or agents, the said railroad, and conducting the business thereof, and exercising the franchises pertaining thereto, and making, from time to time, all replacements, and such useful alterations, additions, and improvements thereto as may seem to them or him judicious; and collecting and receiving all tolls, freights, incomes, rents, issues, and profits of the same and every part thereof, and after deducting the expenses of operating the said railroad and conducting its business, and of all the said repairs, replacements, alterations, additions, and improvements, and
112 all payments which may be made for taxes, assessments, charges, or liens, prior to the lien of these presents upon the said premises, or any part thereof, as well as just compensation for their or his own services, and for the services of such attorneys or counsel as may have been by him or them employed; shall apply the moneys arising as aforesaid to the payment of interest on the bonds secured hereby, in the order in which such interest shall have become due, or shall become due, rateably to the persons holding the coupons ev'dencing the right to such interest; and after paying all interest which shall have become due, to apply the said moneys to the payment of the principal of the bonds secured hereby, rateably to the persons holding said bonds, and after the payment of the principal of all the bonds secured hereby, if any surplus shall remain, to pay over the said sur-
113 plus to the party of the first part, or dispose of the same as any court of competent jurisdiction may order. And the party of the first part hereby covenants and agrees that upon default as herein specified, it will, immediately, upon demand made, deliver, surrender, and yield up to the parties of the second part, or the survivor of them, or their or his successors, the premises and property hereby conveyed and transferred, or intended so to be, and permit the said trustees to operate and maintain said railroad and the appurtenances.

Second. In case any default shall be made, as hereinbefore defined, and shall continue, as hereinbefore specified, then and in any such case the said John R. Gardner and Morris K. Jessup, or the survivor of them and their or his successors or successor in the trust created or declared by this indenture may, or upon requisition of the holders of a majority the bonds secured hereby shall, after entry, as aforesaid, or other entry, or without entry personally or by his
114 or their attorneys or agents sell and dispose of all and singular the premises hereby conveyed or intended so to be, at public auction, in the city of New York, or at such place within the State of Georgia as the trustees or the survivor of them or their or his successors may designate, and at such time as they or he may appoint, having first given notice of the time and place of such sale by advertisement published not less than three times a week for six weeks in one or more newspapers in each of the cities of New York and Savannah, or to adjourn the said sale from time to time in their or his discretion, and if so adjourning to make the same without further notice at the time and place to which the same may be so adjourned and to make or deliver

to the purchasers thereof good and sufficient deed or deeds in the law for the same in fee simple, which sale made as aforesaid, and whether subject to the said lien or otherwise, shall be a perpetual bar both in
115 law and equity against the parties to these presents, and all other persons lawfully claiming or to claim the said premises or any part thereof by, from, through, or under them or any or either of them, and after deducting from the proceeds of such sale just allowances for all expenses thereof, including attorneys and counsel fees and all other expenses, advances, or liabilities which may have been made or incurred by the said trustees in operating or maintaining the said railroad, or in managing its business while in their or his possession, and in arranging for and completing the sale thereof, and all payments which may have been made by them or him for taxes or assessments, and charges and liens prior to the lien of these presents on the said premises or any part thereof, as well as compensation for their or his own services, apply the said proceeds to the payment of interest on the bonds secured hereby in the order in which such interest shall have
116 become, or shall become due, rateably, to the persons holding the coupons *endu*cing the right to such interest, and after paying all interest that shall have become due, to apply the said proceeds of the sale to the payment of the principal of the bonds secured hereby rateably to the persons holding said bonds; and after the payment of the principal of all the bonds secured hereby, if any surplus shall remain, to pay over the said surplus to the party of the first part, or dispose of the same as any court of competent jurisdiction may direct.

And your orator further sheweth that the said The Atlantic and Gulf Railroad Company has made default in the performance of the conditions and stipulations contained in the said indenture of mortgage or deed of trust, and in the said bonds for sixteen hundred and sixty-six thousand dollars issued thereunder and secured thereby, and now outstanding as aforesaid; that the said railroad company wholly
117 failed to pay, or to make any provision for the payment of, either at said company's office or agency in the city of New York or in the city of Savannah, or elsewhere or otherwise howsoever the six months' interest on the said outstanding bonds for sixteen hundred and sixty-six thousand dollars, which become due and payable on the first day of January, eighteen hundred and seventy-seven, but has admitted and announced its inability to meet and pay such interest; and that on the second day of January, eighteen hundred and seventy-seven, the first day of January being a legal holyday in New York, the interest coupons falling due on the said first day of January, upon a large amount of the said outstanding bonds for sixteen hundred and sixty-six thousand dollars, issued under and secured by said mortgage or deed of trust, were duly presented for payment at the said company's
118 office or agency in the city of New York and payment thereof was duly demanded, and such payment was refused for want of funds, and the said interest coupons remain wholly unpaid and in default; and that the amount of interest now in arrear and unpaid upon the said outstanding bonds for sixteen hundred and sixty-six thousand dollars, issued under and secured by said mortgage or deed of trust, is fifty-eight thousand and three hundred and ten dollars; and that such default has continued for the period of sixty days and still continues, and by reason of such default made in the conditions of said mortgage, and in the payment of said interest, and the continuance of such default for said period of sixty days, it has become your orator's

duty to enforce the security of said mortgage or deed of trust upon the property and franchises embraced in and covered by said mortgage or deed of trust for the benefit and security of said bondholders,
119 for whom your orator is trustee. To the end, therefore, that the said defendant may, if it can, show why your orator should not have the relief hereby prayed, and may, upon knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to the following interrogatories, that is to say:

1. State in detail the nature and character of all liens, mortgages, and demands claimed to be superior in dignity to the said bonds secured by the *by the* aforesaid trust deed or mortgage, executed to the said Gardner and Jesup, and to the survivor of them.

2. Give statement of all the property, both real and personal, which belonged to the said defendant at the time of the filing of the said original bill, and the time when, and the title by which the same were acquired.

3. Attach copies of the contracts and conveyance in writing by which the defendant acquired title to the South Georgia and
120 Florida Railroad and the Florida Branch Railroad and the Junction Railroad.

And further that, the aforesaid appointment of John Screven and Samuel A. Strang as receivers of all and singular, the property, rights, tolls, freights, credits, and franchises of the said defendant, and its appurtenances be confirmed, and that pending this litigation and until further order of this court, they and each of them shall have, hold, and use the said railroad and its appurtenances, and by their superintendents, managers, servants, attorneys, or agents shall operate the same, and conduct the business thereof, and exercise the franchises pertaining thereto, and make from time to time all repairs and replacements and such useful alterations, additions, and improvements thereto as may seem to them or him judicious, and collect and receive all tolls, freights, incomes, rents, issues, and profits of the same, and
121 every part thereof, and after deducting the expenses of operating the said railroad and conducting its business, and of all the said repairs, replacements, alterations, additions, and improvements, and all payments which may be made for taxes, assessments, charges, or liens prior to the lien of said bond, and said trust-deed or mortgage upon which this bill is filed, upon the said premises or any part thereof as well as just compensation for their or his own services, and for the services of such attorneys or counsel as may have been by them or him employed, and the costs and expenses of your orator, and the expenses and fees of such counsel as he may have employed, shall apply the moneys arising as aforesaid to the payment of the interest on the said bonds, secured by the said trust-deed or mortgage to the said Gardner and your orator, and to the survivor of them in the order in which such interest shall have become due or shall from time to time become due
122 rateably to the persons holding the coupons evidencing the rights to such interest, and after paying all interest which shall become due to apply the said moneys to the payment of the principal of the said bonds rateably to the persons holding said bonds, and after the payment of the principal of all of said bonds if any surplus shall remain to pay over the said surplus to the said defendant, or dispose of the same as this honorable court may direct.

And further, that upon the final hearing of this cause, the said receivers or the survivor of them, or his or their successor or successors, may be ordered and decreed in the due course of law to sell and dis-

pose of all and singular the premises conveyed or intended so to be to said John R. Gardner and your orator, by the aforesaid mortgage or deed of trust at public auction, as such time and place as this honorable court may designate, having first given notice of said
123 time and place of such sale by advertisement published as this honorable court direct, or to adjourn the said sale from time to time in their discretion or the discretion of either of them; and if so adjourning to make the same without further notice at the time or place to which the same may be so adjourned; and to make and deliver to the purchasers thereof good and sufficient deed or deeds in the law for the same, which sale made as aforesaid and whether subject to the said liens or otherwise shall be a perpetual bar both in law and equity against the parties to said deed of trust or mortgage, and all persons lawfully claiming or to claim the said premises or any part thereof by, from, through, or under them or any or either of them, and after deducting from the proceeds of such sale just allowances for all *all* expenses thereof, including attorneys and counsel fees and all other ex-
124 penses, advances, or liabilities which may have been made or incurred by said receivers or either of them in operating or maintaining said railroad or in managing its business while in their or his possession, and in the payment of the coupons upon the bonds hereinbefore mentioned and the cost of this proceeding, and in arranging for completing the sale thereof, and all payments which may have been made by them or either of them for taxes or assessments and charges and liens prior to the lien of the said mortgage or deed of trust on the said premises or any part thereof, as well as compensation for the services of said receivers and your orator, apply the said proceeds to the payment of interest on the bonds secured by said mortgage or deed of trust in the order in which such interest shall have become due or shall become due rateably to the persons holding the coupons evidencing the right to such interest; and after paying all interest that shall
125 have become due to apply the said proceeds of the sale to the payment of the principal of the bonds secured by said mortgage or deed of trust and rateably to the persons holding said bonds; and after the payment of the principal of all of the said bonds secured by said mortgage or deed of trust, if any surplus shall remain to pay over the said surplus to the said defendant, or dispose of the same as this honorable court shall direct.

And that your orator may have such further or other order, decree, or relief in the premises as may to law and equity seem agreeable and meet:

May it please your honor to grant unto your orator the writ of subpœna, issuing out of and under the seal of this court, directed to the said defendant, The Atlantic and Gulf Railroad Company, commanding it to be and appear in this court, accor' to the cau'se and prac-
126 tice thereof; then and there to answer all and singular the premises, and to stand to and abide by and perform such order and decree in the premises as may be agreeable to equity.

W. S. CHISOLM,
Solicitor & Counsel for Compl't.

UNITED STATES OF AMERICA,
Southern District of Georgia, ss:

Walter S. Chisolm, solicitor and counsel for the complainant in the foregoing bill named, being duly sworn, deposeth and saith that he has read the said foregoing bill of complaint by him subscribed, and

knows the contents thereof; that the same are true of his own knowledge, except as the matters therein stated upon information and belief, and as to those matters he believes the same to be true, and further saith not.

W. S. CHISOLM.

Sworn to and subscribed before me this 18 April, 1877.

JAS. McPHERSON, *Clerk.*

127 *Order.*

Upon hearing the foregoing bill, and due notice to the other party, leave is granted to file the same as a supplemental bill, to which the said defendant shall demur, plead, or answer on the rules day in June next.

In open court, April 18, 1877.

JOHN ERSKINE, *Judge.*

128 *Answer of defendant.*

And afterwards, on the 4th day of February, A. D. 1878, the following proceedings were had, to wit:

The answer of The Atlantic and Gulf Railroad Company, the defendant in said cause, to the original and supplementary bills of the said complainant.

This defendant not and at all times hereafter saving and reserving to itself all benefit and advantage of exceptions which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's original and supplementary bills contained, for answer thereunto, or to so much and such parts thereof as this defendant is advised is or are material or necessary for it to make answer unto, this defendant, answering, saith, that it admits it to be *time* as in
129 said complainant's bills alleged, that said complainant is a citizen of and residing in the State of New York, and that he is the sole surviving trustee under the said alleged mortgage or deed of trust; and further that this defendant is a corporation duly incorporated under the laws of Georgia, and having its principal office or place of business in the city of Savannah, and in said southern district of Georgia.

And this defendant, further answering, admits that at the date alleged in said complainant's bill, the president and secretary of this defendant, acting under the authority of the board of directors of this company, as set forth in a resolution of said board of directors dated December the third, eighteen hundred and sixty-seven, and attached to this answer as Exhibit A, did execute the mortgage or deed of trust in said complainant's said bill set forth, and that Exhibit A to said complainant's bill is a correct copy of said mortgage or deed of trust, and this defendant admits that said mortgage or deed of trust was duly de-
130 livered to said Morris K. Jessup and John R. Gardner, trustees, and that said trustees accepted and assumed said trusts, and this defendant further admits that said mortgage or deed of trust was duly acknowledged, authenticated, and recorded as required by the laws of Georgia.

And this defendant further answering, admits the death of said co-trustee, John R. Gardner, and that said Morris K. Jesup, as surviving trustee, is now invested with the entire estate, and with the powers,

rights, and trusts under said indenture, which were originally invested in him and the said John R. Gardner as cotrustees, no successor to said John R. Gardner ever having been appointed.

And this defendant, further answering, admits, as in said supplemental bill alleged, that after the execution of said mortgage or deed of trust, this defendant executed under its corporal seal bonds of the description, form, and tenor in said mortgage or deed of trust provided for
131 and recited and intended and purporting to be thereby secured, to the aggregate amount of two millions of dollars, as in said mortgage provided for, and issued, negotiated, and transferred for valuable consideration received by the defendant, said bonds to the amount of one million six hundred and sixty-six thousand dollars, with coupons for the interest thereon annexed thereto in form provided for in said mortgage, all of said bonds bearing the certificate of said Morris K. Jesup, and John R. Gardner, trustees, as in said mortgage provided, and that bonds originally executed to make up said aggregate of two millions of dollars, to the amount of three hundred and thirty-four thousand dollars, have been reserved from issue and negotiation, because the sectional mortgage bonds to a corresponding amount, secured by mortgages on particular sections of the road of this defendant and having a prior lien to the consolidated mortgage under which said Morris K. Jesup and John R. Gardner were
132 cotrustees, which said sectional bonds were intended to be taken up and provided for by said consolidated mortgage bonds have not as yet be*ing* taken up but still remain outstanding, and have prior liens upon the respective portions of this defendant's road covered thereby as follows: The sum of one hundred and fourteen thousand five hundred dollars ($114,500), secured by mortgage to Donald McDonald, trustee, dated January 1st, 1860, upon the section of the main line of this defendant's road, commencing at the terminus of the old Savannah, Albany and Gulf Railroad Company, and running from thence to Thomasville, said mortgage having been originally given to secure an issue of bonds to the amount of five hundred thousand dollars ($500,000), the principal of said bonds being due twenty years after date with interest, payable semi-annually.

And the further sum of two hundred and fourteen thousand dollars (214,000,) secured by mortgage originally made to John R. Gardner, trustee, but now held by Daniel G. Purse, subs'ituted trustee,
133 dated July 1st, 1865, to secure an issue of bonds to the aggregate amount of five hundred thousand dollars ($500,000,) with interest payable semi-annually, and the principal payable on the first day of July, 1885, said mortgage covering the section of the main line of this defendant, from the city of Savannah to Screven station, number seven (7).

And this defendant admits that said consolidated mortgage bonds secured by the mortgage or deed of trust, which said complainant is trustee, to the aggregate amount of one million six hundred and sixty-six thousand dollars, are still outstanding, in full force and effect, and are a valid lien on all the property of this defendant, not only that held at the time of the execution of the said bonds and mortgage, but also upon all property acquired by this defendant since the execution of said consolidated bonds and the mortgage securing the same, but
134 this defendant avers that said consolidated bonds, while covering with their lien all the future acquired property of this defendant, hold that lien subject to the mortgages hereinafter more particularly set forth and described.

And this defendant, further answering, admits having made default in the payment of the interest coupons of said consolidated bonds falling due January 1, 1877, but avers that the said default was in great measure caused by the disaster, temporary in its character, arising from the epidemic of yellow fever in the city of Savannah during the summer and fall of 1876, and this defendant admits that said coupons remained unpaid for several months, aggregating in amount the sum of fifty-eight thousand three hundred and ten dollars ($58,310.00), and this defendant further admits that since the railroad and property of this defendant passed into the hands of the receivers appointed by this court in this cause, default has also been made in the coupons of
135 said consolidated bonds to a like amount on the 1st July, 1877, and again to a like amount on January 1st, 1878, but this defendant alleges that its legitimate net income has been and is fully sufficient to meet the obligations of this defendant prior in lien to said consolidated mortgage bonds and leave an ample surplus to rapidly pay off and discharge the past-due coupons of said consolidated mortgage bonds, and in proof of this assertion this defendant says that said receivers, under the order of this court, in addition to expending large sums of money in the purchase of *mse cion*, and equip'ing and improving said railroad property, have paid up all interest due on said sectional bonds, and also all interest due on the first and second mortgage bonds of the South Georgia and Florida Railroad as formerly known, but now a part of the property of this defendant by absolute purchase (which said first and second mortgage bonds have a lien upon
136 said portion of this *defendant by absolute purchase*), *which said first and second mortgage bonds have a lien upon said portion of this* defendant's property prior to the lien of said consolidated mortgage bonds, and have also paid the interest coupons on said consolidated mortgage bonds which fell due January 1st, 1877. And this defendant is informed and believes, and therefore avers that said railroad will soon be able to pay the coupons of the said consolidated bonds which fell due July 1st, 1877, and will rapidly pay off and discharge all the past-due interest on the bonds represented by said complainant as trustee.

And this defendant, further answering, says that it consented to the order of this court appointing the said receivers without waiving, but, on the other hand, reserving all its defences of every kind against this foreclosure, because it was convinced that if the race of diligence between the unsecured creditors of this defendant was not con-
137 trolled, large and valuable interests would be imperriled, and perhaps needlessly and recklessly sacrificed by the interference with the regular business of the company, and not because this defendant was permanently unable to meet its obligations. And this confidents hope and expectation of this defendant has been already realiezd by the rapid manner in which said receivers, acting under the wise anthority and administration of this honorable court, have been able, as aforesaid, to liquidate the past-due obligations of this defendant, at the same time expend large sums in improving and rendering more valuable the security of the said complainant, as trustee as aforesaid.

And this defendant avers and charges that the highest equity forbids the foreclosure of the said mortgage, and the sale of the railroad and property of this defendant under the same, in view of the increasing prosperity of this defendant, because the sale of the prop-
138 erty under such circumstances would in all probability entail the entire sacrifice of the common stock of this defendant, amount-

ing in the aggregate to the sum of three million six hundred and ninety-three thousand two hundred dollars ($3,693,200.00), and the guaranteed stock of this defendant, amounting in the aggregate to , more or less, and the debt of this defendant upon its coupon notes, amounting to the sum of five hundred thousand dollars ($500,000.00), besides interest, and because it would also sacrifice a large debt secured by the personal endorsement of officers of this defendant who gave their name and credit to maintain the credit of this defendant, and to purchase supplies which largely increased and established the value of the security for said bonds by said complainant represented, said endorsements having been made with the knowledge and approval of said com-
139 plainant. And because said sale, if so made, would also emperil and doubtless sacrifice a large number of debts due to the employees of this defendant for labor and services done, performed, and rendered, said employees having through all the period of said yellow-fever epidemic remained at their posts and sustained the credit and business of this defendant. And this defendant respectfully submits the meritorious claims of the said employees to the tender consideration of this honorable court, and urges that their labors and services have preserved and enhanced the value of the security held by the said complainant, and that the amounts so due them should not be recklessly and wantonly sacrificed.

And this defendant, further answering, says that such forced sale might enable a few persons to purchase the railroad and property of this defendant at an almost nominal consideration, but that it
140 should not be done at the wanton and useless sacrifice of such vast interests; that if such results can be avoided by a short postponement of interest under the prospect of speedy payment already made certain by the results hereinbefore set forth, that this court is authorised to make such postponement, and in justice and equity ought so to do.

And this defendant, further answering, says that the bonds secured by the said mortgage or deed of trust to said complainant's bill set forth, do not mature until the year , and are not payable by installments; and, further, that there is no contract upon the face of said bonds or mortgage under which the principal of said bonds matures and becomes due and payable upon default of interest, and this defendant submits to this honorable court that said complainant has no legal or equitable right to foreclose said mortgage and sell said property of this defendant until the maturity of said indebtedness, but that if said complainant is entitled to any right against this defendant
141 he is only entitled to have the net income of the mortgaged property applied to the payment of the accrued and accruing interest coupons after the payment of prior obligations.

And this defendant, further answering, admits, as in said bill alleged, that at the time of the execution of the said mortgage or deed of trust, it held that division of the Florida branch, meaning the portion of the branch road of this defendant from Dupont to Live Oak, lying in the State of Florida, by permanent lease from the Pensacola and Georgia Railroad Company, and has continued to hold and operate the same up to the time of the appointment of receivers in this cause, and this defendant files, with its answer, copies of all the papers showing the tenure by which it holds the portion of said branch road lying in the State of Florida, between the Florida line and the town of Live Oak, and has marked the same Exhibit B.

And this defendant admits that the freight and passenger busi-

142 ness of said branch line from Dupont to Live Oak forms a very important and valuable portion of the through freight and passenger business of said defendant, and the local business of said branch line as well, and that said branch line, with its growing business, constitutes a very important portion of the security of the bondholders represented by complainant, as trustee, as aforesaid.

And this defendant, further answering, admits that in addition to the before-mentioned line, from Savannah to Bainbridge, and the said branch line from Dupont to Live Oak, this defendant has acquired by purchase, possesses, owns, and operates as part of its entire railroad property, known as the Atlantic and Gulf Railroad, the following described other lines of railroad situated in the State of Georgia, namely: The branch running from Thomasville to Albany, about fifty-eight miles (58 m.) in length, which said portion of this defendant's railroad is subject to the lien of said consolidated mortgage represented by said complainant as trustee, but is also subject to the lien of two
143 other mortgages superior in lien to said consolidated mortgage. The mortgages alluded to are as follows:

I. A first mortgage upon said line dated January 15, 1869, and executed by the South Georgia and Florida Railroad Company to George B. Carhart and Henry W. Ford, trustees, to secure the payment of bonds of said company to the amount of four hundred and sixty-four thousand dollars ($464,000), bearing even date with said mortgage, and payable thirty years after date, with interest coupons, at the rate of seven per cent. per annum, payable semi-annually, on the first day of May and November in each year. This class of bonds are endorsed by the governor of the State of Georgia; and it appears upon their face that in case of default in the payment of the interest coupons, "The governor of the State of Georgia authorized to seize and take possession of all the property of said railroad company, extending from Thomasville, Georgia, to Albany, Georgia, and apply the earnings of said road to the extinguishment of said unpaid bonds or coupons,
144 and may, at his discretion, upon continued default in such payment by said company for a period of six months, sell the said railroad and its equipments, and other property of said company, or any portion thereof, in such manner and at such time as in his judgment may best subserve the interest of all concerned, the line of railway being about fifty-eight miles, and apply the proceeds to the payment of this and other bonds of said company, having an equal and like lien as this bond, together with all interest that may be due and unpaid thereon, as he is authorized and directed to do by an act of the general assembly of the State of Georgia, appproved by the governor on the 26th September, 1868."

And this defendant has appended to this answer a copy of said mortgage, and marked the same Exhibit C.

II. A second mortgage upon said line, dated September 6th, 1869, executed by said The South Georgia and Florida Railroad Company, to George B. Carhart, and Henry W. Ford, to secure bonds
145 to the amount of two hundred thousand dollars ($200,000) with interest, payable semi-annually on the first day of May and November in each year, said bonds bearing even date with said mortgage, and payable thirty years after date; and this defendant has annexed a copy of said second mortgage to this answer, and marked the same Exhibit D.

And this defendant admits that at the time of filing said bill the interest coupons on said first and second mortgage bonds of said The

South Georgia and Florida Railroad were approaching maturity; and that said branch line from Thomasville to Albany was and is a very important and valuable portion of the railroad of this defendant, and constitutes a very important and valuable security to the bonds represented by said complainant, because it constitutes by its business a large portion of the through freight and passenger business of this defendant, which would be liable to be diverted to another line of
146 transportation in case the said branch line from Thomasville to Albany should pass from the control of this defendant, or the representatives of its title and interests.

And this defendant, further answering, admits that since the execution of said consolidated mortgage, it has connected two other branch lines, one about two miles in length, running from its depot in Savannah to the wharves of this defendant on the Savannah River, and that the lien of said consolidated mortgage, by its express terms, covers said branch line and wharves; but the lien of said consolidated mortgage is nevertheless subject to the prior lien of a purchase-money mortgage upon said wharf property executed by this defendant to John Screven, Thomas F. Screven, and George P. Screven, dated May 19, 1874, to secure the payment in installments of fifty thousand dollars; that said mortgage has been foreclosed, and that there is now due upon
147 the same the sum of thirty-six thousand nine hundred and seventy-five dollars ($36,975.00), exclusive of interest, and this defendant has annexed to this answer a copy of said purchase-money mortgage, and marked the same Exhibit E.

The other of said recently constructed branch roads is about four and one-half (4½) miles in length, connecting the main line of this defendant with the line of the Savannah and Charleston Railroad Company, and while the lien of said consolidated mortgage extends over said last mentioned branch line, it takes and holds that lien subject to the prior lien of a mortgage executed by this defendant upon said branch road to James H. Johnston and Octav'us Cohen, trustees, to secure an issue of bonds to the amount of fifty thousand dollars ($50,000), said bonds bearing even date with said mortgage, to wit, November 1st, 1875, with interest from date, payable semi-annually on the first day of May and November in each year, at the rate of eight per cent.
148 per annum, all of said bonds being payable in the year eighteen hundred and eighty-one, unless sooner called in for liquidation, paid off, and discharged, the right to which by annual allotment in such amounts as this defendant may desire being expressly reserved; and this defendant further says that in pursuance of said reserved rights it has called in, paid off, and discharged bonds of this issue to the amount of twenty-five hundred dollars ($2,500.00), and that there remain outstanding of said bonds the sum of forty-seven thousand five hundred dollars ($47,500.00); and this defendant has appended a copy of said mortgage upon this branch road, known as the Junction Branch, to this answer, and marked the same Exhibit F; and this defendant, further answering, admits that there are outstanding of the bonds, known as the sectional mortgage bonds, of the defendant, the aggregate of three hundred and thirty-four thousand dollars ($334.000), as follows, to wit:

Of the bonds secured by mortgage to Donald Mc-
149 Donald, trustee, copy of which mortgage is herewith filed as Exhibit G..... 114,500 00

Of the bonds secured by mortgage to John R. Gardner, of July 1, 1865, D. G. Purse, substituted trustee, copy of which mortgage is herewith filed as Exhibit H..... 214,000 00

Of the bonds secured by mortgage, dated July 1, 1867, to John R. Gardner, trustee, upon section from Thomasville to Bainbridge, copy herewith filed as Exhibit I.....	7,500 00
Making an aggregate of.....	$336,000 00

Three hundred and thirty-six thousand sectional mortgage bonds. But this defendant is informed, and believes, and so avers, that two of said sectional mortgage bonds going to make up the aggregate of $336,000.00 have been actually taken up, but a return of the same has not been made so as to enable this defendant to identify the same, which two bonds reduce the aggregate of sectional mortgage bonds outstanding to the sum of three hundred and thirty-four thousand
150 dollars ($334,000.00), as hereinbefore stated. But this defendant positively avers that there is no past due interest outstanding and unpaid upon either of said so-called sectional mortgage bonds, or of said first and second mortgage bonds of the South Georgia and Florida Railroad Company. And this defendant further answering admits that it is indebted, upon its certain coupons notes in the sum of five hundred thousand dollars, which said indebtedness is secured by the so-called second mortgage bonds of this defendant to the amount of one million dollars.

And in addition to said indebtedness upon said coupons notes, as aforesaid, this admits further debts, as follows:

Bills payable as per Exhibit J.....	106,427 00
Free bonds Bainbridge extension.....	52,500 00
Due bills, being balance outstanding of so-called fare bills.	17,427 00
Transient creditors, Exhibit K.....	128,516 85
Due employees, Exhibit L.....	103,047 80
Company's bonds guaranteed by city of Savannah.....	300,000 00
	$707,918 89

151 Amounting in the aggregate to the sum of seven hundred and seven thousand nine hundred and eighteen dollars and eighty-nine cents.

And this defendant admits other claims outstanding and attempted to be assessed against this defendant, to wit:

Judgment in favor of the State of Georgia (exclusive of interest) and cost, the cause now pending upon writ of error before the Supreme Court of the United States, taxes...	32,764 70
Tax executions for year 1874, pending before the supreme court of Georgia	
Tax execution for 1875.....	
Tax execution for 1876	
And this defendant says that the above make an aggregate of.....	

and will be a lien on the property of this defendant in case the right of the State of Georgia to tax the property of this defendant in the manner sought, is established by the decision of the Supreme Court of the United States.

And this defendant further admits that there is pending be-
152 fore the United States circuit court for the southern district of Georgia, a certain claim against this defendant for certain iron, the property of this defendant, nominally for sum of three hundred and fifty thousand dollars ($350,000.00). And this defendant has, with small

and inconsiderable exceptions, set out in its foregoing answer all the claims against this defendant, except any claims which may exist for the overdue interest on guaranteed stock of this defendant; and this defendant reserves the right to amend this answer so as to set forth in detail by exhibit, or otherwise, any other indebtedness of this defendant, or claim against this defendant.

And this defendant files herewith, as Exhibit M, a consolidated statement of the foregoing debts and claims.

And this defendant admits that it is essential for the security of the bondholders represented by the said complainant, and also greatly to the interest of all other bona fide creditors of this defendant,
153 whether secured or unsecured, that the whole of the main line and branches of this defendant's railroad property, as hereinbefore set forth, all of which is covered as hereinbefore set forth by the lien of the mortgage, or deed of trust, of which said complainant is trustee as aforesaid, and constitutes the railroad property of this defendant, shall continue to be operated, used, and maintained as one entire railroad enterprise and that interruption or dislocation of the freights or passage business thereof or of any part thereof should not be permitted to occur, and that the value of the property of this defendant would be materially impaired by any diversion of the currents of business, and further, that proper measures should be taken to prevent the maturity of any of said sectional mortgage bonds according to the terms of the mortgage securing the same by reason of any default on the interest coupons, and also to avoid giving any occasion to the
154 State of Georgia to enter upon and take possession of the branch road from Thomasville to Albany in consequence of the default upon any interest coupons of the four hundred and sixty-four thousand dollars of bonds of the South Georgia and Florida Railroad Company secured by first mortgage upon said branch and endorsed by the State of Georgia as hereinbefore set forth, and that it is equally important that the interest upon the two hundred thousand dollars of second mortgage bonds of said The South Georgia and Florida Railroad Company secured by second mortgage upon said branch should be promptly paid to avoid foreclosure of the said second mortgage, and this defendant further admits that in order to carry on the business of the defendant the appointment of a receiver or receivers was essential as hereinbefore admitted and for the reasons stated.

155 And this defendant admits that the order of February 19, 1877, passed at chambers by Hon. John Erskine, judge of said court, and set forth in said supplemental bill was acquiesced in by this defendant for the best interest of all concerned, this defendant however not waiving thereby but expressly reserving any and all defences of every kind and description to said foreclosure.

And this defendant further admits that, in pursuance of said order, the said receivers have filed their bonds in the clerk's office of said court, and that this defendant, as commanded by said order, has duly assigned all of its property to said receivers.

And this defendant, further answering, says, in reply to the first interrogatory of said bill, that it has already stated, in its foregoing answer, the nature and character of all liens, mortgages, and demands claimed to be superior to the liens of the bonds secured by the mortgage or deed of trust of which said complainant is trustee as
156 aforesaid, so far as this defendant is at present advised, and that this defendant will make any connections and amendments which may hereafter become necessary.

And this defendant, further answering, says, in reply to said second interrogatory, that in its foregoing answer it has stated in full the real property of this defendant, and the titles by which the same were acquired, as fully as this defendant has deemed necessary and requisite, but professes itsself ready to answer more fully in this regard if so required by this honorable court.

And this defendant herewith files full inventories of all its personal property, as owned and turned over by it to said John Screven and Samuel A. Strang, receivers, February 23, 1877, and has marked the same Exhibit N. And this defendant, in response to said third interrogatory, files herewith copies of contracts and conveyances under which it acquired and holds the title to said The South Georgia
157 and Florida Railroad, and has marked the same Exhibit O^1, O^2, O^3, O^4, O^5.

And this defendant, further answering, says that the property of this defendant covered by the lien of said mortgage, of which said complainant is trustee, has a value far in excess of the whole aggregate of said consolidated bonds, and of all liens prior to theirs, and is a full and ample security for said bonds, and is constantly increasing in value.

And this defendant denies all and all manner of unlawful combination and confederacy, without this, that there is any other matter, cause, or thing in said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, travarsed, and avoided or denied, is true to the knowledge and belief of this defendant, all which matters and things this defendant is ready and
158 willing to aver, maintain, and prove as this honorable court shall direct; and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf sustained.

R. FALLIGANT,
Sol'r for the Atlantic & Gulf Railroad Company.

159 And afterwards, to wit, on the 22d day of April, A. D. 1878, the following proceedings were had, to wit:

Order allowing petition, pro interesse suo, to be filed by Branch, Sons & Co. et al.

Upon the petition of Branch, Sons & Co., W. E. Smith, John Jackson, R. J. Bacon, Richard Hobbs, S. L. Ingraham, John A. Davis, E. Barber, F. E. McLellan, W. E. Mitchell, George Spring, M. P. Calloway, L. E. & H. E. Welch, H. E. Welch, L. E. Welch, F. O. Welch, J. C. Byington, Sam. Mayer, & Jesse W. Walters, it is ordered that said parties have leave to file their petition pro interesse suo in the above stated case, setting forth their claims as preferred creditors of the Atlantic and Gulf Railroad, with the right to have their claims paid out of the proceeds or net earnings of the South Georgia and Florida Railroad, now in the hands of the receivers appointed in the above-stated case; and also their right to have the sale of the South Georgia
160 and Florida Road to the Atlantic and Gulf Railroad rescinded and the former turned over to the president and directors of the South Georgia and Florida R. R. Co, for the benefit of the creditors & stockholders of said last-named road.

In open court, April 22, 1878.

JOHN ERSKINE,
U. S. Judge.

And afterwards, to wit, on the said 22d day of April, A. D. 1878, the following petition was filed, to wit:

Petition pro int'resse suo of Branch, Sons & Co. et al.

161 UNITED STATES OF AMERICA:

To the United States circuit court for the southern district of Georgia:

The petition of Thomas Branch, John P. Branch, Frederick R. Scott, & Thomas P. Branch, partners under style of Branch, Sons & Co., all citizens of Virginia, except Thomas P. Branch, who is a citizen of said southern district & of Georgia, whose said firm is located & doing business in the city of Augusta, in Georgia, and of William E. Smith, John Jackson, R. J. Bacon, Richard Hobbs, L. L. Ingrahm, John A. Davis, E. Barber, F. E. McLellan, W. E. Mitchell, George Spring, M. P. Callaway, L. E. & H. E. Welch, H. E. Welch, L. E. Welch, F. O. Welch, J. C. Byington, Samuel Mayer, and Jessie W. Walters, all citizens of Georgia, & residents in said southern district, sheweth that on the thirteenth day of February, 1877, Moses R. Jessup, claiming to be surviving trustee under a certain mortgage deed made by the Atlantic & Gulf Railroad, a corporation under the laws of Georgia, to secure certain bonds issued by said company, filed his bill in the court against said railroad to foreclose said mortgage, and in the meantime
162 to have a receiver appointed to take possession of said railroad & its appurtenances, and manage it under the direction of this court. Your petitioners further shew that in compliance with the prayer of said bill two receivers have been appointed who have taken possession of said railroad, to wit: and John Screven; that said receivers have also taken possession of all railroads connecting with said Atlantic & Gulf Railroad, over which the latter, at the time of the appointment of said receivers was exercising control and operating, including the connecting road known as the South Georgia and Florida Railroad, a road built by the South Georgia & Florida Railroad Company (a corporation under the laws of Georgia), and running from Albany, Georgia, to Thomasville, a distance of fifty-eight miles.

Your petitioners further shew that said receivers are operating said South Georgia and Florida Railroad in the interest of the bondholders of the Atlantic and Gulf Railroad, and appropriating the income derived from said South Georgia & Florida Railroad to the pay-
163 ment of the coupons of the bonds issued by the Atlantic & Gulf Railroad as they fall due. Your petitioners further shew that the mortgage lien of said bondholders does not cover the said The South Georgia & Florida Railroad, as appears from the mortgage itself, all of which more fully & at large appears by the bill so filed in this court, as aforesaid, by said trustee.

Your petitioners further shew that they and many others are holders of what are called certificates of special guaranteed seven per cent. stock to the amount of some three hundred thousand dollars, or other large sum, of which your petitioners alone own some fifty-six thousand one hundred dollars, certificates, to cover which amount they here make profert of; which certificates were issued by the Atlantic & Gulf Railroad under a contract with the South Georgia & Florida Railroad, bearing date January 2nd, 1869, for the construction of the South Georgia and Florida Railroad, which contract was at various times subsequently modified and finally completed January 8th, 1876; all of which will fully appear by reference to copies of said contract with its modi-

164 fications hereto attached and marked A. Your petitioners further shew that while it may be true that said receivers are appropriating the net earnings of the said South Georgia & Florida Railroad to the payment of the interest on the bonds of said last named road as it falls due (of which your petitioners know nothing) it is certain that no payment has been made on said guaranteed scrip since the first day of May, 1874. Your petitioners further shew that the net earnings of the said South Georgia & Florida Railroad if kept unmingled with those of the Atlantic & Gulf Railroad would not only pay the entire interest of the bonds of the South Georgia & Florida R. R., but also pay in full the interest due your petitioners & other holders of said guaranteed scrip, besides creating a sinking fund for the redemption of said bonds at maturity.

Your petitioners further shew that said guaranteed scrip was given by said Atlantic & Gulf R. R. to the South Georgia and Florida R. R. Company for the purchase of the latter railroad, as fully appears from said Exhibit A hereto attached, and was by said South Georgia & Florida R. R. Company distributed among the contractors who built the latter road, in payment for their labour; that said guaranteed
165 scrip is transferable by delivery as will appear by reference to a copy of one of them hereto annexed, marked B. That, in said guaranteed scrip, said Atlantic & Gulf R. R. engaged to pay seven per cent. on their par value, per annum, payable semi-annually, on the first of November & May of each year.

Your petitioners further shew, that they are advised, that under the laws of Georgia, they would have the right to proceed by attachment against the said Atlantic & Gulf R. R. for the payment of said so-called guaranteed scrip (but which your petitioners are advised are, in legal effect, promissory notes given by said Atlantic & Gulf R. R. Company for the purchase-money of said South Georgia & Florida R. R.), and to have said attachment levied on said South Georgia & Florida R. R., and thereby secure a lien, prior to all others set up in said bill upon said South Georgia & Florida R. R., if said last-named road had not been taken possession of under the order of this court by said receivers as officers of the court. Your petitioners further shew that the South Georgia & Florida R. R. is chartered to run from Albany, Georgia, to the Florida line, and was fully completed and finished
166 from Albany to Thomasville, Georgia, at the time of the transfer of that part of the road lying between Albany and Thomasville, to the Atlantic & Gulf R. R. Your petitioners further shew that said South Georgia & Florida R. R. is entirely solvent and able to meet all of its obligations, including the debts due to its contractors now represented by said guaranteed scrip issued by the Atlantic & Gulf R. R., under said contract hereto annexed, marked A, in part payment of that portion of said South Georgia & Florida R. R. lying between Albany and Thomasville, provided that portion of their road now in the hands of the receivers of this court, being the same that was sold to the Atlantic & Gulf R. R., be transferred to said South Georgia & Florida R. R. Company. Your petitioners further show that the South Georgia & Florida R. R. Company have received no other or further consideration for that portion of their road so sold to the Atlantic & Gulf R. R. Company as aforesaid, except what is set fourth in the contract between the two roads, and as to that contract, the said Atlantic & Gulf R. R. has failed to comply with the terms of it as hereinbefore stated. They
167 further shew that said South Georgia & Florida R. R. besides the actual cost of its construction amounting to a million of dollars, or

some such sum, is worth a very large additional sum owing to its peculiar geographical position, being the connecting link between the Southwestern Railroad (which is itself united with the Central Railroad and under the management & control of said Central R. R.) and the Atlantic & Gulf R. R. That owing to this geographical position and the fine agricultural country through which it runs, under proper management, its net earnings would amount to one hundred thousand dollars annually, or even a greater sum; that if the said South Georgia & Florida R. R. is allowed to remain in the hands of said receivers the whole of its net income will be appropriated to sustain the failing fortunes of the Atlantic & Gulf R. R., or may be so appropriated to the endangerment of the bondholders of the South Georgia & Florida Road and the certain destruction of the interests of the holders of said guaranteed scrip. For should said bondholders of the South Georgia &
168 Florida R. R. be forced to foreclose their mortgage & sell said road, all security for the ultimate payment of said guaranteed scrip would be lost, unless said road, under a forced sale, should bring enough to pay off said bonds in full & leave a balance sufficient to redeem said guaranteed scrip, which is not likely in the present financial condition of the country.

Your petitioners therefore pray for themselves and all others similarly situated, who may choose to come in and be made parties to this petition and pay their pro rata of expenses, that they may be examined pro interesse suo, touching their paramount claim upon the proceeds of said South Georgia Florida R. R. after payment of the interest on the bonds issued by last-named road, and that an order may be passed directing such an examination to be had before the master, or that such other direction may be given as will tend to subserve the ends of justice. And that said South Georgia & Florida R. R. may be restored to the president and directors of said company for
169 the benefit of the creditors & stockholders of said road, or that such disposition be made of it as will secure the net earnings of said road to the payment of the claims of your petitioners & of others providing like claims next in order after the payment of the coupons of the bonds of said road, and your petitioners will ever pray, &c.

W. W. MONTGOMERY,
Sol'r for Petitioners.

STATE OF GEORGIA,
County of Thomas:

This indenture made and entered into this the eight' day of January, anno Domino eighteen hundred and seventy-six, between the *the* South Georgia and Florida Railroad Company, a corporation under the laws of Georgia, party of the first part, and the Atlantic and Gulf Railroad Company, also a corporation under the laws of Georgia, party of the second part, witnesseth, that whereas the said part*ys* of the first and second part did, on the nin'teenth day of June, in the year eighteen hundred & sixty-eight, agree, first, that the party of the first part
170 shall construct the South Georgia and Florida Railroad from a junction with the railroad of the party of the second part at or near the town or city of Thomasville, in said county of Thomas, to the east bank of Flint River, at Albany, Georgia, and thence across the river to a depot at or near the depot of the Southwestern Railroad Company, in the said town or city of Albany, & whereas in the said contract & agreement of the date of the nineteenth day of June, eighteen hundred and sixty-eight, certain agreements, *never* made between the parties hereto

as to the construction of & on completion of said road from Thomasville to Albany for the sale & delivery of said road by the party of the second part, all of which will *now* fully appear by reference to said agreement of the nineteenth day of June, eighteen hundred & sixty-eight. And whereas by certain articles of agreement, made and entered into on the fifteenth day of January, eighteen handred & sixty-nine, between the said parties to the said original contract of sale of June the nineteenth, eighteen hundred & sixty-eight, was by said parties hereto modified and altered, which will more fully appear by reference to said last-mentioned contract, both of said contracts being hereby made a part of this deed.

171 And whereas by an agreement made between the parties hereto of the first and second part of the first day of September, eighteen hundred and sixty-nine, another & further modification & alteration was made of the aforesaid first and second two agreements as to the purchasing and payment by the party of the second part to the party of the first part for the construction, sale, & delivery by the party of the first part to the party of the second part of the property of the said The South Georgia & Florida Railroad Company, which said third agreement is also hereby incorporated into and made a part of this deed. And whereas, in persuance of & in compliance with the three said agreements, the president and board of directors of the said The South Georgia and Florida Railroad Company on the tenth day of October, eighteen hundred and seventy, passed the following resolutions: Whereas the South Georgia and Florida Railroad Company entered into an agreement with the Atlantic & Gulf Railroad Company on the nineteenth day of June, eighteen hundred and sixty-eight, by which a transfer of the said South Georgia and Florida Railroad was to be made; that is, all of said road between Thomasville and Albany, upon certain conditions therein stipulated, all of which will

172 more fully appear by reference to said agreement; and whereas the said South Georgia & Florida Railroad has been completed to East Albany, & the same has been turned over to the Atlantic & Gulf Railroad Company, & which is now being operated by said Atlantic & Gulf Railroad Company; and whereas the president of the Atlantic & Gulf Railroad Company has signified his willingness to receive said road as finished to East Albany; and whereas the South Georgia & Florida Railroad Company have made up the entire cost of said road, & made the affidavit and certificate under both prescribed by said agreement, it is therefore resolved that the president of the road proceed to Savannah, submit his estimate and certificates, and demand and recover the guaranteed stock agreed to be given to the South Georgia & Florida Railroad stockholders under said agreement in terms of the several agreements made by the South Georgia & Florida Railroad Company with the said Atlantic & Gulf Railroad Company. Resolved, further, that the president be, and he is hereby, authorised to make, execute, and deliver all papers necessary to carry & full*f*ill said agreement for a transfer of so much of said South Georgia

173 and Florida Railroad as lies or is located between Thomasville and Albany, especially reserving the other franchise or rights of building and equi*t*ing a railroad from Thomasville to Florida line under the charter of the said South Georgia and Florida Railroad Company; and whereas on the twelfth day of October, eighteen hundred and seventy, the said party of the second part The Atlantic and Gulf Railroad Company received and accept' the terms of the aforesaid resolution of the said party of the first part, the South Georgia and

Florida Railroad Company, for the sale & transfer of the said South Georgia & Florida Railroad, as expressed in said agreement and resolutions, and did issue its guaranteed stock and make and execute its endorsement upon the bonds of said party of the first part, in compliance with the said agreements and the obligation of the said The Atlantic and Gulf Railroad Company to pay off and cancel all the bonds, first and second mortgages, bonds of the South Georgia and Florida Railroad Company, mentioned and specified in said agreement. Now, therefore, this indenture witnesseth that for and in consideration of the issue and delivery of the guaranteed stock of the said party of the second part and its endorsements upon the bonds of the party of the first part in conformity with the aforesaid agreements and the written obligation and solem' undertaking of the party of the second
174 part to pay & take up and cancel all the coupons of the said first and second mortgage bonds as they severally fall due of the party of the first part, and the other written obligation and solemn obligation of the party of the second part not only to pay, take up, and cancel the several coupons as aforesaid, but to pay, take, and cancel all of the several first and second mortgage bonds of the first part as they shall severally become due and payable, which obligation and undertaking will more fully appear by reference to aforesaid three agreements, in conformity with the three agreements aforesaid and said resolutions, receipt whereof, both as to guaranteed and stock endorsements of bonds, and obligations to pay coupons and bonds, as aforesaid bonds is hereby acknowledged, hath hereby granted, bargained, sold, aliened, and conveyed unto the said party of the second part, and its successors and assigns, and by these presents the said party of the first part does grant, bargain, sell, alien, and convey unto the said party of the second part, and its successors and assigns forever, under the authority of the aforesaid cited agreements and resolutions, so much of said South Georgia and Florida Railroad as lies or is located between the said towns or cities of Thomasville and Albany, in the State of Georgia, together with all of the lands, right of way, depots, station-houses, equipments, rails, chains, & spikes, road-bed, and superstructure to the same belonging or in any wise appertaining, and all the buildings and structure erected by the party of the first part along
175 the line of said road for the purpose of using the same; also including all the bridge & culberts erected & made on the line of said road by said party of the first part between said two terminal points, including also the franchises of the party of the first part to construct and use said South Georgia and Florida Railroad between the above-mentioned terminie Thomasville and Albany, Georgia: To have and to hold all and singular the estate & property, real and personal, and all the rights and franchises of the said party of the first part as are hereinbefore set forth and particularly described, required under its charter and by construction, and herein & hereby intended to be conveyed to the said party of the second part and its successors and assigns in fee simple forever.

In testimony the said The South Georgia and Florida Railroad

Company has caused its corporate seal duly attested to be hereunto affixed on the day and year first herein above written.

ROBERT H. HARDAWAY, [L. S.]
President South Ga. & Florida Railroad Company.

Signed, sealed, & delivered in presence of—
A. T. McINTYRE, Jr.
DONALD McLEAN,
J. P. Thomas County, Ga.

{ THE SEAL OF THE SOUTH GEORGIA AND FLORIDA. RAILROAD. } Attest: P. S. BOWEN,
Secretary & Treasurer
South Ga. & Fla. R. R.

176 The interlineations on 128 & 129 pages was made by me when recorded.
Recorded January, 1876.

JOHN FEW,
Clerk S. C.

STATE OF GEORGIA:

This indenture, made the nineteenth day of June, in the year of our Lord one thousand eight hundred and sixty-eight, between the said South Georgia and Florida Railroad Company of the one part, and the Atlantic and Gulf Railroad of the other part, witnesseth that, whereas the charter of the said South Georgia and Florida Railroad Company, adopting the provisions of the Georgia and Florida Railroad Company, approved January twenty-second, one thousand eight hundred and fifty-two, authorizes said South Georgia and Florida Railroad Company at any time to incorporate their stock with the stock of any other company on such terms as may be agreed upon by such companies; and whereas the charter of the Atlantic and Gulf Railroad Company, 'dopting the provisions of the Savannah and Albany Railroad charter, approved December twenty-fifth, one thousand eight hundred and forty-seven, is authorized to have such branch roads towards the north and towards the south to such point or points as they may deem requisite; and whereas the South Georgia and Florida Railroad Company hath agreed to build its railroad from Thomasville to Albany, com-
177 mencing at Thomasville and completing and turning over the same to the Atlantic and Gulf Railroad Company as completed in sections, and when completed to Albany to incorporate the stock with the guaranteed stock of the Atlantic and Gulf Railroad Company, so that the said road, from Thomasville to Albany, will form a branch of the Atlantic and Gulf Railroad: Now this indenture witnesseth that the said South Georgia and Florida Railroad Company doth by these presents agree to construct the South Georgia and Florida Railroad from junction with the Atlantic and Gulf Railroad at or near Thomasville, to the east bank of the Flint River at Albany, & thence across the river to a depot at or near the depot of the Southwestern Railroad Company, the first section from Thomasville to be not less than ten miles, and to be completed in good working order, with all necessary warehouses, platforms, water-tanks, crossings, road-signs, cattle-guards, and all other usual and necessary appendages, and such as may be required by law, and to be then delivered to the Atlantic and Gulf Railroad Company, each successive section of said road to be thus completed and turned over to the Atlantic and Gulf Railroad Company, until the railroad shall be completed to Albany, the length of said

sections and the consequent location of depots to be determined with the consent and approval of the president of Atlantic and Gulf Railroad Company, and the Atlantic and Gulf Railroad Company agrees
178 to receive, occupy, work, and maintain each section of the South Georgia and Florida Railroad as it shall be completed as aforesaid from Thomasville to Albany, and to pay seven per cent. per annum, payable semi-annually on the first days of May and November, on the actual cost of each section from the time of its completion and its reception by the Atlantic and Gulf Railroad Company, the South Georgia and Florida Railroad Company holding itself hereby pledged to carry on the work of construction at the least practicable cost, such actual cost as aforesaid to be ascertained upon the statement of the president and chief engineer of said company, certified under before a judge of any superior court of this State, declaring that each section of the road, as the same may be delivered, has been constructed at the least practicable cost as aforesaid. And it is mutually agreed between the parties that when the South Georgia and Florida Railroad shall be completed from Thomasville to Albany, or as soon thereafter as practicable, the stock of the South Georgia and Florida Railroad Company shall be incorporated with the stock of the Atlantic and Gulf Railroad Company as aforesaid, and seven per centum of the said actual cost of the said South Georgia and Florida Railroad shall continue to be paid on the stock after the incorporation in the same manner as before. When the stock shall have been incorporated as aforesaid, all the rights,
179 privileges, and franchises of the South Georgia and Florida Railroad Company, so far as relates to the road from Thomasville to Albany shall vest in the Atlantic and Gulf Railroad Company, and the said road shall be a branch of the said Atlantic and Gulf Road. And it is further stipulated that no payment shall be made to the South Georgia and Florida Railroad Company by the Atlantic and Gulf Railroad Company after the first section has been paid for upon any section of said road until the preceding section of said road has been entirely relieved of all debt incumbrance, or liens, other than such as may remain unsettled for right way, which the said South Georgia and Florida Railroad Company shall have been unable to settle. And it is further also stipulated and agreed that the construction of the South Georgia and Florida Railroad shall be pushed forward with the least possible delay, so as to reach the east bank of the Flint River opposite Albany before the expiration of three years from the first day of January, one thousand eight hundred and sixty-nine; and the said road shall be built across the Flint River to a point in Albany at or near the track of the Southwestern Railroad Company at Albany within one year thereafter; and in case the *constitution* of said South Georgia and Florida Railroad shall not be carried out as aforesaid, then the Atlantic and Gulf Railroad Company shall have the right at its option to
180 take possession of the unfinished portion of said road and complete the same without obligation for the cost of such completion to the said South Georgia and Florida Railroad Company. In witness whereof the said South Georgia and Florida Railroad Company and the said Atlantic and Gulf Railroad Company, by resolutions of their respective board of directors, authorizing, approving, and ratifying the same, have caused their respective corporate seals, with the signatures

of their presidents, to be hereunto affixed the day and year first above written.

{ SOUTH GEORGIA AND FLORIDA RAILROAD. } R. H. HARDAWAY, *President of the South Ga. & Fla. R. R. Co.*

Attest:
JOHN WARK,
Secretary pro tem.

{ ATLANTIC AND GULF RAILROAD COMPANY. } JOHN SCREVEN, *President of the Atlantic and Gulf R. R. Co.*

Attest:
D. MACDONALD,
Sec'y A. & G. R. R. Co.

Witness to the signing and sealing on the part of the South Georgia and Florida Railroad Company.

{ A. P. WRIGHT, NOTARY PUBLIC, THOMAS CO., GA. } H. H. SEWARD.
ARTHUR P. WRIGHT,
Notary Public, Thomas County, Ga.

Witness to signing and sealing on the part of the Atlantic and Gulf Railroad Company.

181 A. M. C. DUNCAN.
JNO. M. B. LOVELL,
Not. Pub., Chatham Co., Ga.

20 worth I. R. stamps attached and cancelled.
Recorded January 19th, 1876.

JOHN FEW,
Clerk S. C.

STATE OF GEORGIA:

Article of agreement, made and entered into this fifteenth day of January, in the year of our Lord one thousand eight hundred and sixty-nine, between the Atlantic and Gulf Railroad Company of the one part and the South Georgia and Florida Railroad Company of the other part; both parties being corporations duly incorporated by and under the laws of the State of Georgia.

Whereas, at a meeting of the board of directors of the Atlantic and Gulf Railroad Company, held on the second day of January, 1869, the following resolution was passed, viz: Whereas the Atlantic and Gulf Railroad Company entered into a contract with the South Georgia and Florida Railroad Company on the nineteenth day of June, 1868, wherein it was stipulated, among other things, that said Atlantic and Gulf Railroad Company would pay for the franchises and other property of said South Georgia and Florida Railroad Company in the guaranteed stock of the said The Atlantic and Gulf R. R. Co. when the said
182 should be built to Albany; and whereas it was also stipulated that no payment should be made to said South Georgia & Florida Railroad Company after the first section shall have been pay for upon any section of the road until the preceeding section of the road has been entirely relieved of all debt, incumbrance, or lien other than such as may remain unsettled for right of way which the said South Georgia & Florida Railroad Company shall have been unable to settle; and whereas it was further stipulated that the said Atlantic and Gulf Railroad Company should pay seven per centum interest, payable semi-

annually, on the actual cost of said South Georgia and Florida Railroad by sections as said sections were completed; and whereas, since the making of said contract, the legislature of this State passed an act authorizing the State to endorse the bonds of the South Georgia and Florida Railroad Company secured by mortgage to the amount of eight thousand dollars per mile; and whereas said bonds and mortgage may be beneficially used so as to benefit both companies; and whereas said bonds may and cannot be used without a modification of said contract of the nineteenth day of June, 1868: Therefore it is resolved that this company *company* consent and agree that a modification of said contract shall be made, and agrees
183 that the South Georgia and Florida Railroad Company may issue first mortgage bonds, secured by mortgage on its road, franchises, and other property, with a view to its investments in rail, spikes, chains, &c., and for the further construction of said road; and that in lieu of issuing said guaranteed stock for the amount of said bonds, the Atlantic and Gulf Railroad Company will pay said bonds as they severally become due, and that they will receive said road and pay the balance of stock that may be due for constructions, subject to said mortgage and bonds and coupons, attached and the Atlantic and Gulf Railroad Company will bind itself to save harmless the South Georgia and Florida Railroad Company from the payment of said bonds and the interest thereon after the reception of the road. Resolved, That the Atlantic and Gulf Railroad Company consent and agree that said contract may and shall be further modified so as so authorize the president of the Atlantic and Gulf Railroad Company to issue guaranteed stock to contractors in payment of monthly estimates as said estimates may be rendered; the interest on said stock to be charged to said contractors until the section on and for which it is issued shall be completed; a sufficient amount of each estimate to be returned to meet and discharge said interest when the section is completed, and that all former action of this bo*n*d conflicting with
184 these resolutions is hereby revoked. Resolved further, That the president of this company be, and he is hereby, authorized to make and enter into a contract with the South Georgia and Florida Railroad Company covering the points in the foregoing resolutions. And whereas at a meeting of the board of directors of the South Georgia and Florida Railroad Company, held on the twelfth day of January, 1869, the foregoing resolutions an' action of the Atlantic and Gulf Railroad Company were approved and adopted by the said board of directors of the South Georgia and Florida Railroad Company in the following recital & resolutions, viz: Whereas the said resolutions were passed at the instance on the request of the South Georgia and Florida Railroad Company, it is therefore resolved that the president of this company be, and he is hereby, authorized to make and enter into a contract with the Atlantic and Gulf Railroad Company covering the points in the foregoing resolutions, as passed by the of directors aforesaid Atlantic and Gulf Railroad Company. Now this agreement witnesseth, that for and in consideration of the aforesaid matters in said resolutions set forth, and for and in consideration of the mutual covenants and agreements between the parties hereto set forth, contained in the aforesaid contract of date the nineteenth day of June, 1868, and to which contract special reference is now made, the parties hereto con-
185 sent and agree to a m*a*dification of said contract, of date the nineteenth day of June, 1868, and agree and covenant that the South Georgia and Florida Railroad Company, the party hereto of the second

part, may and shall issue the bonds of the corporation from Thomasville, Georgia, to Albany, Ga., a distance of fifty-eight miles, and may and shall secure the payment of said bonds and the interest thereon by a first mortgage on the road, franchises, and other property of said party of the second part. And the Atlantic & Gulf Railroad Company covenants and agrees that in lieu of issuing guaranteed stock, as provided by said contracts, of date the nineteenth day of June, 1868, to the amount of said bonds so to be issued by the party of the second part, it, the party of the first part, The Atlantic and Gulf Railroad Company, will pay said bonds and the coupons for the interest thereon as they may severally fall due. And the said party of the first part further covenants and agrees that it will receive said South Georgia and Florida Railroad by sections, as is provided in said original contract, of date the nineteenth day of June, 1868, subject and liable to the lien of said mortgage, to secure the payment of said bonds and interest, and that it will pay and deliver the balance of the guaranteed stock agreed originally to be paid for the construction of said road, after deducting
186 therefrom the amount of said bonds to be issued as aforesaid, according to the terms of the aforesaid resolutions of the party of the first part; and the said party of the first further covenants and agrees to indemnify and save harmless the party of the second part from the payment of the principal of said bonds and of the interest thereon after the reception of said road, as is provided for in and by said contract, of date the nineteenth day of June, 1868; and the said party of the first part further covenants and agrees, and bind itself in the terms of the aforesaid resolutions to issue to the contractors on the road of the party of the second part the guaranteed stock of the party of the first part, with interest at seven per centum per annum, payable semi-annually, at the times mentioned and appointed therefor in said contract of date the nineteenth day of June, 1868, in payment of monthly estimates issued or to be issued to said contractors by said party of the second part, as said monthly estimates may be rendered, the interest on said guaranteed seven per cent. stock from the date of its issue to be charged to said contractors until such time as the section on which the estimate issued and rendered is completed, turned over to, and received by the party of the first part, the party of the first part retaining a sufficient amount of said stock
187 from each estimate as in the discretion of its president will be ample and sufficient to meet the payment of said interest so to be charged to said contractors as aforesaid until the said section is completed and received as aforesaid. And the said parties hereto mutually covenant, agree, and bind themselves and their successors and assigns, each to the other fully and good faith to do, execute, and perform all and singular the agreements, covenants, and stipulations severally on their parts as well hereinbefore made as those made and contained in said original contract of date of nineteenth day of June, 1868, except in so far as the latter contract may be changed and modified by this agreement. In testimony whereof the said parties hereto under and by virtue of the aforesaid resolutions have caused their several corporate seals, duly attested, to be hereunto affixed the day and year first hereinbefore written.

{ ATLANTIC AND GULF } JOHN SCREVEN,
{ RAILROAD COMPANY. } *President Atlantic and Gulf R. R Co.*

D. MACDONALD,
Secretary.

Signed, sealed, and delivered in presence of—
Witness to seal of the A. & G. R. R. Company:
JNO. M. B. LOVELL.

ROB'T FALLIGANT, NOTARY PUBLIC, SAVANNAH, CHATHAM COUNTY, GEORGIA.

ROB'T FALLIGANT,
Notary Public,
Chatham County, Georgia.

188 SOUTH GEORGIA AND FLORIDA RAILROAD CO.

R. H. HARDAWAY,
President So. Ga. and Fla. R. R. Co.

P. S. BOWER, *Secretary.*

Signed, sealed, and delivered in presence of—
Witness to the seal of the South Ga. and Fla. R. R. Company:
A. A. SEWARD.

COURT OF ORDINARY OF THOMAS COUNTY, STATE OF GEORGIA.

A. A. TOOKE,
Ordinary, Thomas County, Ga.

25c. I. R. stamps attached and cancelled. Recorded Jan'y 19th, 1876.

JOHN FEW,
Clerk S. C.

STATE OF GEORGIA,
Chatham County:

Articles of agreement, made and entered into this the first day of September, A. D. eighteen hundred and sixty-nine, between the Atlantic and Gulf Railroad Company of the one part, and the South Georgia and Florida Railroad Company of the other part, both parties being corporations duly incorporated by and under the laws of Georgia. Whereas at a meeting of the board of directors of the South Georgia and Florida Railroad Company, held on the nineteenth day of
189 July, A. D. 1869, the following resolutions was passed, viz: Resolved, that the president of this company be authorized to issue second mortgage bonds of this company not to exceed two hundred thousand dollars, subject to the ratification of the board of directors of the Atlantic and Gulf Railroad Company, the same to be issued to contractors in lieu of guaranteed stock, at not less than 66⅔ cents on the dollar, or to be otherwise dispursed of as this company may direct; and whereas at a meeting of the board of directors of the Atlantic and Gulf Railroad Company, held on the first day of September, 1869, the foregoing resolutions and action of the South Georgia and Florida Railroad Company were approved and adopted by the said bond of the Atlantic and Gulf Railroad Company in the following resolutions, viz: Resolved, that this company hereby authorized the South Georgia and Florida Rail' Company to issue mortgage bonds on the road from theirs and others, and other property to the amount of ten hundred thousand dollars, payable thirty years from the date thereof, and it is further resolved that the agreement heretofore made between this company and the South Georgia and Florida Railroad Company shall be so modified and changed that this company shall be under no obligations to issue i's guaranteed stock on account of construction of said South Georgia and Florida Railroad Company so soon as said second mortgage
190 bonds shall be prepared, and issue to the amount of said bonds so used as aforesaid—that is, that bonds shall be substituted for guaranteed stock of like amount, this company to issue stock for balance of construction account not paid for by said bonds as per aforesaid agreements, and that the said agreements shall also be so notified and

changed that this company will endorse and guarantee the payment of said bonds, and will pay the bonds and coupons attached at maturity, and that the said second mortgage bonds take the place of the same or equal amount of guaranteed stock authorized and agreed to be issued by this company under these agreements aforesaid. Resolved, that the president of this company be, and he is hereby, authorized and impowered to endorse the second mortgage bonds of the South Georgia and Florida Railroad Company to the amount of ten hundred thousand dollars. Now, this agreement witnesseth, for in consideration of the aforesaid matters in said resolutions set forth, and for and in consideration of the mutual covenants and agreements between the parties hereto set forth and contained into several contracts, first one of date nineteenth day of June, A. D. 1868, and the second one of date fifteenth day of January, 1869, and to which said contracts special reference is now made, the parties hereto consent and agree to a modification
191 of said contracts of date aforesaid, and agree and contract and covenant that the South Georgia and Florida Railroad Company, the party hereunto of the second part, may and shall issue bonds of the corporation of the said South Georgia and Florida Railroad Company to the amount of ten hundred thousand dollars, in addition to the bonds already authorized and contracted to be issued by said company, to be designated and known as second mortgage bonds, and may and shall secure the payment of said second bonds by a second mortgage on the road, franchise, and all other property of said party of the second part; and the said Atlantic and Gulf Railroad Company covenants and agrees that in lieu issuing guaranteed stock as provided by said former contracts of dates as aforesaid to the amount of said bonds so to be issued by the party of the second part, it, the party of the first part, The Atlantic and Gulf Railroad Company, will endorse and guarantee the payment of said bonds and will pay said second mortgage bonds *and* the company *for* the interest thereon as they may severally fall due, and said party of the first part, The Atlantic and Gulf Railroad Company further covenants and agrees that it will receive said South Georgia and Florida Railroad by section' as is provided in said original contract of the nineteenth day of June, 1868, and
192 liable to the lien of said second as well of first mortgages, to secure the payment of said second mortgage bonds and interest, and that it will pay and deliver the balance of the guaranteed stock agreed originally to be paid for the construction of said road, after deducting therefrom the amounts to be issued as aforesaid, as well as said first mortgage bonds, according to the tenor of the aforesaid resolution of the party of the first part; and the said party of the first part further covenants and agrees to indemify and save harmless the party of the second part from the payment of the principal of said bonds and of the interest thereof or thereon, after the reception of said road, as is provided for in and said contract of date as aforesaid; and the said party of the first part further covenants and agrees to carry into effect and fully to comply with all the stipulations, covenants, and agreements contained in said former contracts or agreements, of dates as aforesaid, not modified or changed by this contract or agreement. And the said parties hereto mutually agree and bind themselves, and their successors and assigns, each to the other, fully and in good faith, to execute and perform all and singular the agreements, covenants, and stipulations severally on their hands, as will hereinbefore made as them made and contained in said original contracts, of dates aforesaid, except

193 in so far as the latter contract may be changed and modified by this agreement.

In testimony whereof the said parties hereto, under and by virtue of the aforesaid resolutions, have caused their several corporate seals, duly attested, to be hereunto affixed the day and year first hereinbefore written.

{ ATLANTIC AND GULF RAILROAD CO. }

JOHN SCREVEN,
President Atlantic and Gulf R. R. Co.

Atttest:
D. MACDONALD,
Secretary.

Signed, sealed, and delivered in the presence of—
ROBERT FALLIGANT,
Notary Public, Chatham County, Georgia.

{ SOUTH GEORGIA AND FLORIDA RAILROAD CO. }

R. H. HARDAWAY,
President So. Ga. and Fla. R. R. Co.

P. S. BOWER,
Secretary.

Recorded January 19th, 1876.

JOHN FEW,
Clerk S. C.

Extract from minutes of October 10, 1870.

Whereas the South Ga. & Fla. Railroad Company entered into an agreement with the Atlantic and Gulf Railroad Company, on the nineteenth day of June, 1868, by which a transfer of the said South
194 Georgia and Florida Railroad was to be made (that is, all of said road between Thomasville and Albany) upon certain conditions therein stipulated, all of which will more fully appear by reference to said agreements; and whereas the South Georgia and Florida Railroad has been completed East Albany and the same has been turned over to the Atlantic and Gulf Railroad Company, and which is now being operated by said Atlantic and Gulf Railroad Company, and whereas the president of the Atlantic and Gulf Railroad Company has signified his willingness to receive said road finished to East Albany, and whereas the South Georgia and Florida Railroad Company have made up the entire cost of said road and made affidavit certificate under oath as prescribed by said agreement, it is therefore resolved, that the president of this road proceed to Savannah, submit his estimates & certificates, and demand and receive the guaranteed stock agreed to be given to the South Georgia and Florida Railroad stockholders under said agreements in terms of the several agreements made by the South Georgia and Florida Railroad Company with said Atlantic and Gulf Railroad Company. Resolved, further, that the president be, and he is hereby, authorized to make, execute, and deliver all papers necessary to carry out and fulfill said agreements for a transfer of so much of said South Georgia and Florida Railroad as lies or is located between Thom-
195 asville and Albany, specially reserving the other franchise or rights of building and equip'ing a railroad from Thomasville to the Florida line under the charter of the South Georgia and Florida Railroad Company.

I do hereby certify that the above is a true and correct extract from the minutes.

{ SOUTH GEORGIA } P. S. BOWER,
{ AND FLA. R. R. CO. } *Secretary.*

Recorded January 19, 1876.

JOHN FEW,
Clerk S. C.

I certify that this is a true and correct record of the deed in this office. M'ch 17th, 1877.

J. W. GROOVER,
C. S. C.

196 B.

$6,600.] No. 250. [66 shares.

ATLANTIC AND GULF RAILROAD OF GEORGIA.

Special guaranteed seven per cent. stock issued under a contract with the South Georgia and Florida Railroad Company bearing date January 2, 1869, for the construction of the South Georgia and Florida Railroad.

This is to certify that Branch & Sons or bearer is entitled to sixty-six shares on which the par value of one hundred dollars has been paid of the special stock of the Atlantic and Gulf Railroad Company, on which interest from date is perpetually guaranteed at the rate of seven per centum per annum, payable semi-annually, at the office of the company in Savannah, on the first day of May and November in each year. This scrip to be received with other like scrip when the blanks for interest on the back hereof are filled.

Witness the signature of the president and the seal of said company at Savannah, this first day of November, 1872.

JOHN SCREVEN,
President.

Attest:
D. MACDONALD,
Secretary.

(Endorsed:)
Received interest to November 1, 1870.
" " " May 1, 1871.

197 Received interest to November 1, 1871.
" " " May " 1872.
" " " November " "
" " " May " 1873.
(Signed) BRANCH & SONS.
Received interest to November 1, 1873.
(Signed) HENRY BRYAN.
Received interest to May 1, 1874.
(Signed) WM. LAW, JR.
Received interest to November 1, 1874.
(Signed) E. A. SILVA.
Received interest to May 1, 1875.
" " " November 1, 1875, &c., &c., &c., to November 1, 1881.

Shares guaranteed seven per cent. stock S. G. & F. R. R. No. 250.

And afterwards, on the 19th day of May, A. D. 1879, the following proceedings were had, to wit:

Application and order to amend petition.

The petition of the South Georgia and Florida Railroad Com-
198 pany, a corporation under the laws of Georgia, respectively shows that it is interested in the controversy in the above stated case, growing out of the petition pro interesse suo, filed in said cause by Branch Sons & Co. and others, and prays that it may be allowed to unite in said petition, and to file an amendment thereto setting forth more fully the rights of the South Georgia and Florida Railroad Company, and of the stockholders thereof filing said original petition, and that it be made a party to said petition.

The original petitioners also pray that they may join in said amendment, so as to set forth more accurately their relation to the South Georgia and Florida Railroad Company, and to insist on such rights as they are legally entitled to, which may not be fully set forth in their original petition. And petitioners will ever pray, &c.

W. W. MONTGOMERY,
Sol'r for So. Ga. & Fla. R. R. Co. and for
199 *Branch Sons & Co. et al., original petitioners.*

Order.

Upon the petition of The South Georgia and Florida Railroad Company and the original petitioners in the above stated petition pro interesse suo, praying that The South Georgia and Florida Railroad Company may be made a party petitioner in said petition pro interesse suo, and that then all the petitioners have leave to amend said petition, setting forth more fully the rights of The South Georgia and Florida Railroad Company, and of the stockholders thereof; and defining more accurately the relations of the original petitioners to The South Georgia & Florida Railroad Company, and setting forth such rights as said original petitioners may be legally entitled to not fully set out in the original petition. It is ordered that the prayer of the petitioners he granted,
and that they have leave to file their amendments to said peti-
200 tion pro interesse suo, for the purpose aforesaid; and that the petition to make said corporation a party, &c., be filed as part of the record in said cause.

Without prejudice.

JOHN ERSKINE,
Judge.

And afterwards, to wit, on the same day, to wit, the 19th day of May, A. D. 1879, the following amendment was filed in words following, to wit:

Amendment to petition.

And now, by way of amendment to said petition, the leave of the court being thereunto first had, come the said Branch Sons & Co. et al., and the South Georgia and Florida Railroad Company, a corpora-

tion under the laws of Georgia, and say that the contract between The Atlantic and Gulf Railroad Company and The South Georgia and Florida Railroad Company, as it appears fully set forth in the exhibits
201 attached to their original petition, is void as ultra vires, against public policy, neither company under its charter having any power to make such a contract.

Petitioners further shew that the original holders of the so-called guaranteed stock were subscribers to the stock of the South Georgia and Florida Railroad Company, and paid their subscription by work done on the various sections of said road, for which they received scrip of various amounts according to the value of the work done by them, in all respects similar to Exhibit B of the original petition, and that the present holders are bona fide purchasers of said scrip, except in some instances where the original holders have never parted with their scrip. This fact, your petitioners are advised, makes all the holders of said scrip stockholders of the South Georgia and Florida Railroad Company. And your petitioners further shew that the bonds of the So. Ga. and Fla. R. R. Co., endorsed by the State, will not be due until your petitioners further show that at the time the various instru-
202 ments in writing (of which copies are attached to the original petition) were executed both the Atlantic and Gulf Railroad and the South Georgia and Florida Railroad supposed that each company had full power to enter into said contract, as appears by reference to the preamble of the writing bearing date June 19th, 1868, and that there was no intention on the part of either company to exceed the powers held under its charter, or to induce the other company to do so.

Being now, however, advised that said contract is void, or, if not void, that it only amounts to a lease, your petitioners pray that the same may be rescinded and said instruments decreed to be cancelled, and the receivers directed to deliver said South Georgia and Florida Railroad Co. to the South Georgia and Florida R. R. Co., or if the court be of opinion that the contract between the Atlantic and Gulf R. R. Co. and the South Georgia and Florida R. R. Co. was a lease
203 of the road of the latter company to the former, then your petitioners still pray that the contract may be rescinded for non-compliance with its terms on the part of the Atlantic and Gulf R R. Co., and because of its continuing inability to comply, and the receivers ordered to return said South Georgia and Florida Railroad over to the South Ga. & Fla. R. R. Co.

But if the court should be of opinion that the contract was a valid sale of the railroad running from Albany to Thomasville, then your petitioners pray, as in their original petition, that they may be decreed to have the first lien upon it after its mortgages, for the amount of the scrip held by them, and that said road be decreed to be sold and the proceeds paid first in full satisfaction of principal and interest represented by said scrip held by the stockholders of the So. Ga. & Fla. R. R. Co., said sale to be subject to the prior liens of the two mortgages
204 given by the South Georgia and Fla. R. R. Co., and the balance, if any, of the purchase money paid as the court may direct. And that your petitioners may have such other and further relief as the nature of their case may require and to your honors may seem meet.

And your petitioners will ever pray, &c.

W. W. MONTGOMERY,
Pet'r's Solicitor.

And afterwards, on the 28th day of May, A. D. 1879, the following petition and order was filed, to wit:

Petition and order to make W. B. Bennett party to petition.

The petition of W. B. Bennett, a citizen of Georgia, showeth that he is a holder of the so-called guaranteed scrip of the Atlantic and Gulf Railroad Company, one of the defendants in the above stated case, issued under a contract with the South Georgia and Florida Rail-
205 road Company, bearing date January 2, 1869, that said scrip calls for ten shares on which the par value of one hundred dollars per share has been paid of the special stock of the Atlantic and Gulf R. R. Co.; that said scrip was issued by the Atlantic and Gulf Railroad Company and turned over to the South Georgia and Florida Railroad Company, under said contract and the amendments thereto, and by the latter company delivered to two of the subscribers to the stock of said latter company, as evidence of their having paid in full their subscription to said stock; that said two subscribers were Young, Papet & Co. (subscribers for five shares), and Mrs. Eliza A. Jones, also a subscriber for five shares; that the subscription to all of said shares, to wit, one hundred dollars on each share, has been fully paid. That said scrip (here to the court shown) is payable to bearer and became the property of petitioner in due course of trade for a valuable con-
206 sideration, by means whereof your petitioner is advised he became a stockholder in the South Georgia and Florida Railroad Company, entitled to all the rights and privileges of other stockholders in said company.

Wherefore he prays he may be made a party to the petition pro interesse suo filed in the above stated case by Branch Sons & Co. et al., and that he may have the relief prayed in said petition, and in any amendments thereto, and such further relief as the nature of his case may require.

And petitioner will ever pray, &c.

W. W. MONTGOMERY,
Pet'r's Solicitor.

Order.

Upon the petition of W. B. Bennett, setting forth that he is a stockholder in the South Georgia and Florida Railroad Company, and praying that he may be made a party to the petition pro interesse suo filed
in the above stated cause by Branch Sons & Co. et al., ordered
207 that the prayer of petitioner be granted without prejudice in open court.

JOHN ERSKINE, *Judge.*

MAY 28, 1879.

And afterwards, to wit, on the 6th day of June, A. D. 1879, the following order was passed, to wit:

Order dismissing petition pro interess' suo. Branch Sons & Co. et al.

On motion of counsel for bondholders and counsel for the defendant, and after full argument, it is considered, ordered, and decreed that the intervening petition of Branch Sons & Co., W. B. Bennett, and the

South Georgia and Florida Railroad Company be, and the same are hereby, dismissed.

June 6, 1879.

JOSEPH P. BRADLEY, *C. J.*

And afterwards, to wit, on the 20th day of June, A. D. 1879, the following decree was made.

Decree.

208 In the fifth circuit court of the United States for the southern district of Georgia. In equity.

MORRIS K. JESUP, SURVIVING TRUSTEE, &C., complainant,
and
THE ATLANTIC AND GULF RAILROAD COMPANY, defendant.

EUGENE KELLY ET AL., TRUSTEES, &C., COMplainants,
and
THE ATLANTIC AND GULF RAILROAD COMpany, defendant,
and the interventions in the above-stated causes.

These causes came on to be further heard together, upon the bills and answers in the above-stated causes, and the various interventions filed in the same, and was argued by counsel, and thereupon, upon consideration thereof, it was, on this 6th day of June, 1879, ordered, adjudged, and decreed as follows, to wit:

First. It is declared, adjudged, and decreed by the court that the defendant is a railroad corporation duly established under and by the laws of the State of Georgia, with its principal place of business
209 in the city of Savannah, and the southern district of Georgia, and its property consists of the following described lines of railway, estate, and effects, to wit: Its main line running from its depot, in the city of Savannah, to Bainbridge, a distance of two hundred and thirty-seven (237) miles, more or less; a branch from said depot, in the city of Savannah, to the Savannah River, a distance of three (3) miles, more or less; a branch from Thomasville, on said main line, to Albany, formerly known as the South Georgia and Florida branch, a distance of fifty-eight (58) miles, more or less; a branch from Dupont, on the said main line, to Live Oak, in the State of Florida, a distance of forty-eight miles, more or less; a branch connecting the said main line with the Savannah and Charleston Railroad, running four (4) miles, more or less; together with all side tracks connected with said main line and branches. Also the wharves in the jurisdictional limits of the city of Savannah, known as the Atlantic and Gulf Railroad wharves, fronting two thousand two hundred feet, more or less, on the Savannah River, and running back from said river a distance of feet, more or less; the depot grounds in the city of Savannah, known as the Atlantic and Gulf Railroad depot, containing eighty-two and three-tenths
210 (82.3) acres, more or less; the depot grounds of said company in Albany; the depot grounds of said company in Thomasville; the depot grounds of said company in Bainbridge; the depot grounds of said company at Live Oak, in the State of Florida; and other depot

grounds, lots, and parcels of land, and stations along the line of the said railway and branches, together with all and singular the buildings, structures, and improvements thereon, and the machinery, engines, cars, rolling-stock, and materials of various kinds and descriptions, and the privileges, franchises, money, rents, issues, profits, tolls, income, and appurtenances of every kind and description thereto belonging, or in anywise appertaining.

Second. It is further declared, adjudged, and decreed that all of said lines and branches, wharves, depots, stations, ways, franchises, rolling-stock, equipments, and appurtenances constitute the Atlantic and Gulf Railroad; that the whole is operated as an efficient and important line, mail, freight, and passenger transportation, and would be greatly and irreparably damaged by a dismemberment thereof, and must be sold as an entirety.

Third. It is further declared, adjudged, and decreed by the court that the following named mortgages made, to secure the bonds therein described on separate parts or portions of said railway and appurtenances, are good and valid mortgage liens upon the property and
211 estate covered by each respectively, and for the amounts herein decreed to be due upon each respectively, to wit: 1. The section of said main line commencing at the termination of the old Savannah, Albany and Gulf Railroad, and running thence to Thomasville, is subject to a mortgage to Donald Macdonald as trustee, made and executed on the first day of January, A. D. 1861, to secure an issue of five hundred thousand dollars ($500,000) of bonds, with interest, payable semi-annually, and the principal payable in twenty years from date, and that of these bonds there are outstanding the sum of one hundred and fourteen thousand five hundred dollars ($114,500).

2. The section of the said main line, from Savannah to Screven, or station number seven (7), is subject to a mortgage, made and executed on the first day of July, A. D. 1865, originally to John R. Gardner as trustee, but now held by Daniel G. Purse as substituted trustee, in place of the said Gardner, since deceased, to secure an issue of five hundred thousand dollars of bonds, with interest, payable semi-annually, and the principal on the first day of July, A. D. 1857, and that of these bonds there are still outstanding the sum of two hundred and fourteen thousand dollars principal.

3. The section of the said main line, from Thomasville to Bain-
212 bridge, is subject to a mortgage made and executed on the first day of July, A. D. 1867, originally to John R. Gardner, as trustee, but now held as substituted trustee, in place of the said Gardner, since deceased, to secure an issue of five hundred thousand dollars of bonds, with interest, payable semi-annually, and the principal payable on the first day of July, A. D. 1887, and of these bonds there are still outstanding the sum of seven thousand five hundred dollars principal.

4. The section or branch from Thomasville to Albany, formerly known as the South Georgia and Florida Railroad, is subject to a first mortgage, made and executed on the fifteenth day of January, A. D. 1869, to George B. Carhart and Henry W. Ford as trustees, to secure an issue of four hundred and sixty-four thousand dollars of bonds of the said South Georgia and Florida Railroad Company, and indorsed by the governor of the State of Georgia, with interest thereon, payable on the first days of May and November of each year, and the principal payable thirty years from date. All of these said last-mentioned bonds are still outstanding.

And the said section or branch, from Thomasville to Albany, is also further subject to another mortgage, made and executed on the sixth day of September, A. D. 1869, to the said George B. Carhart
213 and Henry W. Ford as trustees, to secure an issue of two hundred thousand dollars of bonds of the said South Georgia and Florida Railroad Company, with interest, payable on the first days of May and November of each year, and the principal in thirty years from date. All of these said last-named bonds are still outstanding.

5. The section or branch known as the Junction Branch Railroad, connecting the said main line with the track of the Central Railroad and Banking Company and with the track of the Savannah and Charleston Railroad Company, is subject to a mortgage, made and executed on the first day of November, A. D. 1875, to James H. Johnston and Octavus Cohen as trustees, with interest at the rate of eight per cent. per annum, payable on the first days of May and November of each year, and the principal payable on the first day of November, A. D. 1881, unless sooner called in for liquidation; and of these bonds there are still outstanding the sum of forty-seven thousand five hundred dollars ($47,500). There are no defaults in the payment of the interest of any of the aforesaid bonds, and the aforesaid mortgages are and shall remain good and valid incumbrances upon the property described in each respectively, notwithstanding the sale hereinafter decreed. And the receivers will continue as heretofore the payment of the interest
214 coupons thereon until relieved by the further order of this court.

Fourth. It is further declared, adjudged, and decreed by the court that the mortgage or deed of trust made and executed to Morris K. Jesup and John R. Gardner on the twentieth day of December, A. D. 1867, and now held by the said Morris K. Jesup as surviving trustee, to secure an issue of two millions dollars ($2,000,000) of the bonds of the said Atlantic and Gulf Railroad Company, payable on the first day of July, A. D. 1897, with interest payable on the first days of January and July of each year, which said bonds are fully set forth and described in the said bill of the said Morris K. Jesup, surviving trustee, is a good and valid mortgage or deed of trust covering all the property and estate therein mentioned; that is, of the entire estate, real, personal, and mixed, of the tolls, rights, income, franchise, and property of every kind and description, acquired and to be acquired, of the Atlantic and Gulf Railroad Company, including the said branch formerly known as the South Georgia and Florida Railroad and the said branch commonly known as the Junction Branch Railroad, connecting the main line of the said Atlantic and Gulf Railroad with the Savannah and Charleston Railroad. That of the said last-named bonds there are outstanding and in the hands of bona-fide holders the
215 sum of one million six hundred and sixty-six thousand dollars; that upon these last named bonds there are past due and unpaid the interest coupons, payable January the first, A. D. 1879, amounting to fifty-eight thousand three hundred and ten dollars, with interest thereon from that date; and that upon said bonds there will be due the further sum of fifty-eight thousand three hundred and ten dollars on the first day of July, A. D. 1879, which said sum will draw interest from that date; and that the said Morris K. Jesup, as surviving trustee as aforesaid, do recover the said sums, together with the interest thereon due and to be due as aforesaid, for the benefit of the holders of said coupons. That the said Morris K. Jesup, surviving trustee as aforesaid, and his successors in the said trust continue to hold the balance of the said bonds, to wit, the amount of three

hundred and thirty-four thousand dollars thereof, for the purpose of raising money to retire the said mortgage bonds of the various issues, amounting originally to one million five hundred thousand dollars, and given upon different sections of the said railroad, and of which said sectional bonds there are now outstanding the sum of three hundred and thirty-six thousand dollars, and continue to consolidate the mortgage indebtedness of the said defendant company as provided in and by the said mortgage or deed of trust to the said Morris K. Jesup
216 and John R. Gardner, trustees as aforesaid; and that the said mortgage or deed of trust last mentioned is and shall remain a good and valid mortgage or deed of trust, securing the payment of the said bonds and coupons as aforesaid, upon all the property which it has been hereinbefore decreed to cover, with all the powers, covenants, stipulations, and agreements in the same contained, notwithstanding the sale hereinafter decreed, except as to the January, 1879, and July, 1879, coupons upon the said one million six hundred and sixty-six thousand dollars of bonds, which said coupons, together with the interest thereon, are to be paid out of the proceeds of the sale hereinafter decreed.

Fifth. It is further declared, adjudged, and decreed that the said mortgage or deed of trust made and executed by the said Atlantic and Gulf Railroad Company on the first day of January, A. D. 1872, to Eugene Kelly and Samuel A. Strang as trustees, to secure an issue of ($1,500,000) payable on the first day of January, A. D. 1892, with interest free from government tax imposed or to be imposed, payable on the first days of January and July in each year, is a good and valid mortgage or deed of trust of the property therein mentioned; that is, upon all the constructed railroad of the said Atlantic and Gulf Railroad Company and branches, including the said branch from Thomasville to Albany formerly known as the South
217 Georgia and Florida Railroad, with its superstructure, tracks, viaducts, culverts, fences, depots, wharves, stations, ways, franchises, rolling-stock, equipments, privileges, rents, issue, profits, tolls, income, and property of every kind appurtenant to said railroad and branches; that if said issue of $1,500,000 of bonds there are outstanding and in the hands of bona fide purchasers for value, the amount of $1,415,000; that on the first day of July, A. D. 1877, the said defendant failed to pay the interest coupons on said $1,415,000, bonds which were due and payable on that day, amounting to the sum of $49,525, and made default therein, which default still continues; that the said defendant again, on the first days of January and July, A. D. 1878, and January, A. D. 1879, respectively, failed to pay the interest coupons which were due and payable on said last-named bonds on those days, the default made on each of those days amounting to $49,525, which said defaults still continue; that there will be due on the interest coupons on said last-named bonds which are payable on the first day of July, A. D. 1879, the further sum of $49,525. And that the said complainants, Eugene Kelly and Samuel A. Strang, as trustees as aforesaid, recover of the said defendant for the benefit of the holders of said $1,415,000 of bonds, the said principal of said bonds, and the principal of said coupons with interest on said coupons from the time when
218 each is respectively payable. And it appearing from the amended answer of the defendant to the bill of said Eugene Kelly and Samuel A. Strang, trustees as aforesaid, that the said defendant disclaims any knowledge as to the title of certain $8,000 of the said $1,415,000 of

bonds, any party in interest may move the court to exclude the said $8,000 of bonds, which are described in said amended answer, from participation in the proceeds of the sale hereinafter decreed and for such other order or decree concerning the said $8,000 of bonds as may be necessary in the premises.

That $85,000 of the said issue of $1,500,000 of bonds are held by Daniel G. Purse and Edward Lovell, as trustees, to keep and hold the said bonds as security, to indemnify and make whole the holders of the "change bills" of said defendant outstanding on the fourth day of January, A. D. 1877, upon condition, nevertheless, that as any amount of said "change bills" might be cancelled from time to time, a like amount of said bonds should be also discharged from the trust aforesaid; that on the fourth day of January, A. D. 1877, there were outstanding of said "change bills" the sum of $89,000, and that since that date there have been cancelled of said "change bills" the sum of $73,586, leaving of said "change bills" now outstanding the sum of $15,414; that of said $85,000 of said bonds there must be cancelled the sum of
219 $73,586, and that the remainder thereof, amounting to $12,500, together with the interest coupons thereon for July, 1877, January and July, 1878, and January and July, 1879, be retained by the said Daniel G. Purse and Edward Lovell, trustees as aforesaid, as collateral security for such of the holders of said "change bills" as may intervene before the final decree to be rendered in these causes; and that the said Eugene Kelly and Samuel A. Strang, as trustees as aforesaid, recover for the use and benefit of said Daniel G. Purse and Edward Lovell, trustees as aforesaid, the sum of $15,414, to be paid to the holders of said "change bills" upon surrender of the same, pro rata, out of the share of the proceeds of the sale hereinafter decreed, to which the said $12,500 of bonds and the aforesaid unpaid coupons thereon, now held as collateral security for the payment of said uncanceled "change bills," shall be entitled on a distribution of the proceeds of said sale.

Sixth. It is further declared, adjudged, and decreed, that the said defendant is indebted to the State of Georgia for taxes the following amounts, to wit:

For the year	1874,	principal			$32,764	71
" " "	1875	"			8,754	55
" " "	1876	"			9,080	31
" " "	1877	"			12,441	16
" " "	1878	"			7,076	26
Aggregating					70,116	99

220 And also the principal sum of such tax as may be assessed by the comptroller-general of the State of Georgia for the year 1879; that such taxes are prior to all other liens except judicial costs; that neither penalty nor interest is due on the taxes for any one of the aforesaid years; that the said principal sums due for the years 1874, 1875, 1876, 1877, and 1878, and the principal sum to be due for the year 1876, when the same shall be assessed by the comptroller-general shall all be held out of the proceeds of the sale hereinafter decreed, subject to the demand of the State of Georgia.

Seventh. It is ordered, adjudged, and decreed that the defendant, The Atlantic and Gulf Railroad Company, pay into the registry of this court on or before the first day of August, A. D. 1879, the amount ascertained and hereinbefore declared to be due for principal and interest of

said unpaid coupons by the said defendant to the complainant, Morris K. Jesup, as surviving trustee, under the trust deed made to him and John R. Gardner, now deceased; and also the amount hereinbefore decreed to be due for principal of the bonds and principal and interest of the aforesaid unpaid coupons by the said defendant to said Eugene Kelly and Samuel A. Strang, trustees as aforesaid, together
221 with the costs of court in these causes.

Eighth. It is further ordered, adjudged, and decreed, that in the event of such payment and redemption as above provided for on the part of the defendant, The Atlantic and Gulf Railroad Company, these causes stand continued with leave to the complainants, or either of them, to apply for appropriate relief in the event of any subsequent default in the payment of interest, and that in the meantime all proceedings therein be stayed.

Ninth. It is further ordered, adjudged, and decreed, that all and singular the franchises and property of the said Atlantic and Gulf Railroad Company be sold (unless payment be made by the defendant as above provided) subject to the amount of the prior liens and incumbrances found to be due and stated in the 1st, 2nd, 3rd, & 4th paragraphs of this decree, as the same may exist at the time of sale, and as is in the said paragraphs of this decree, provided, to wit, said property and franchises be sold subject to the sectional mortgages securing the payment of the bonds described in the 1st, 2nd, & 3rd paragraphs, and to the mortgage or deed of trust made to Morris K. Jesup and John R. Gardner, as trustees as aforesaid, securing the payment of the
222 bonds and coupons described in the 4th paragraph, except as to the January, 1879, and July, 1879, coupons on said bonds, together with the interest thereon, and the said property and franchises shall be sold under the said last-mentioned trust deed in so far as the same secures the payment of said coupons and the interest thereon, and said coupons and interest shall be paid out of the proceeds of the sale, and subject also all executory contracts made by the receivers under the authority of the court, which contracts, if any, must be publicly announced at the time of sale; and subject also to any liability that may be hereafter established against the receivers, growing out of any lawful acts done by them in their capacity of receivers, and such liabilities, if any, will remain a lien upon the premises until discharged, but subject to no other liens, claims, or incumbrances whatsoever. Such sale, unless stayed by payment as hereinbefore provided, shall be made by John Screven and Samuel A. Strang, the receivers appointed by the court or by the survivor of them, the successor or successors of such survivor at public auction, in front of the United States custom-house in the city of Savannah, southern district of Georgia aforesaid, on the fourth day of November, A. D. 1879, first giving notice of such time and place of sale by advertisement published not less than three
223 times a week for six weeks, in one or more newspapers in each of the cities of New York and Savannah.

The said receivers or receiver shall sell the premises herein directed to be sold to the highest and best bidder, and shall require such bidder before making an adjudication to him to pay in cash the sum of three hundred thousand dollars should said bid be equal to or greater than this sum, and if the sale is confirmed by the court the balance of the purchase money, if any, must be paid within thirty days after said confirmation, but the purchaser shall have the right to anticipate the day of payment. After the payment by the purchaser of such sum in cash as may be sufficient to pay the costs, charges, and expenses of

the trust of the complainant, Morris K. Jesup, surviving trustee as aforesaid, and of the trust of the complainants Eugene Kelly, and Sam'l A. Strang, trustees as aforesaid, and of these causes the indebtedness of the receivers, such claims as the court declares to be prior liens to the lien of the said mortgage or deed of trust made to said Eugene Kelly and Samuel A. Strang, trustees as aforesaid, and orders to be paid out of the proceeds of the sale and for the payment of the pro rata dividend out of the net proceeds of sale for distribution that
224 may be due to other beneficiaries under the said last-mentioned trust deed, the receivers may receive from the purchaser in part payment of such purchase money the aforesaid bonds secured by said last-mentioned deed of trust declared to be in the hands of the bona fide purchasers for value, and such interest coupons thereon as may have become due and payable, at such rate percentum of the par value thereof as the purchaser would otherwise be entitled to be paid in cash in respect thereof out of the net proceeds of sale or distribution thereof among the holders of such bonds and coupons, and the percentage so applied in satisfaction of the purchase money shall be treated as a payment of such bonds and coupons to the extent of such application.

If any question shall arise as to the proportion of the purchase money that must be paid in cash and the proportion thereof that may be paid in bonds and coupons, application may be made to the court.

In case of the failure of any bidder to comply with the terms of sale that are to be complied with on the day of sale, and before a final adjudication to the bidder, the receivers may reject the bid and proceed at once, then and there, to make a resale, or they may then and there publicly guarantee that on some other day to be then designated,
225 not more than ten days thereafter, and between certain hours of the day, to be designated, they will, at the same place, make a sale of the premises, under the decree, without further advertisement, and they may make the same accordingly.

And said receivers are hereby authorized to employ any proper person to conduct such sale.

Tenth. It is further ordered, adjudged, and decreed, that the receivers report the sale and the proceedings under this decree to this court with all convenient speed, and give notice thereof to the complainant's solicitor, who may present the said report to this court, or to the judges thereof, at chambers, on five days' notice to the purchaser and the defendants' solicitor. If, on presentation and consideration of the said report of sale, the court or the judges thereof at chambers shall confirm the sale, the complainant's solicitor must forthwith prepare and submit to the court, or to the judges thereof at chambers, a draft deed of conveyance from the receivers to the purchaser, and upon the settlement of the form thereof, and upon due compliance with the terms of sale by the purchaser, the receivers must execute and deliver such deed of conveyance to the purchaser, and the purchaser and his successor or successors in interest will then and thereupon be let into pos-
226 session of the premises. The purchaser will also and at the same time be entitled to receive all books, maps, plans, papers, records, and documents of the defendant company, and of the several sectional parts thereof, and relating to all extensions or branch roads of said company, and of the receivers relating and appertaining to the franchises and property in question.

Eleventh. It is further ordered, adjudged, and decreed, that by the sale and conveyance to be made as aforesaid of the property and franchises hereinbefore decreed to be sold by the said receivers, the defend-

ant and all persons claiming under it shall be absolutely and forever barred and foreclosed of and from all estate, right, lien, claim, and equity of redemption, of, in, or to, or in respect of said property and franchises so sold and conveyed, and each and every part thereof.

Twelfth. It is further ordered, adjudged, and decreed that the receivers remain in possession of the mortgaged premises and continue to operate the said railroad after the sale and until the conveyance thereof. They will keep a correct account of the earnings and income of the premises accruing after the date of sale, and if the sale should be
227 confirmed, the purchaser on delivery of *of* possession by the receivers will be entitled to receive the net income and earnings accruing subsequent to the date of sale, and the proceeds of such income and earnings.

Thirteenth. It is further ordered, adjudged, and decreed, if the sale shall not be confirmed by the court, the amount of purchase money paid by the purchaser shall be refunded without deduction, unless the non-confirmation thereof shall be due to the fault of the purchaser, in which event such terms will be imposed as the court may think just and proper.

Fourteenth. It is further ordered, adjudged, and decreed that after the payment of the January, 1879, and July, 1879, coupons on the bonds secured by the aforesaid trust deed or mortgage held by Morris K. Jesup, surviving trustee as aforesaid, and the interest on such coupons out of the proceeds of the sale, the said case of Morris K. Jesup, surviving trustee, against the said Atlantic and Gulf Railroad Company, shall stand continued until the further order of this court.

Fifteenth. And whereas various person' have intervened for their interest, claiming to have liens against the property of The Atlantic and Gulf Railroad Company, as laborers, mechanics, or material
228 men, or claiming to have an equity to be paid out of the moneys' in the hands of the receivers herein before the payment of the said bonds secured by the said mortgages, and the said interventions having been heard and considered, it is further ordered, adjudged; and decreed that as to all claims of laborers and mechanics who have furnished labor or materials in and upon the said railroad and its appurtenances prior to the appointment of said receivers, which by the laws of Georgia entitle them to liens therefor, and who have taken the proper steps required by said laws to perfect said liens, by having the same recorded or otherwise verified within the time prescribed by law, such claims shall be, and are hereby, declared to be liens on the said property and proceeds thereof superior to the said mortgage executed and given to Eugene Kelly and Samuel A. Strang, but not superior to the other mortgages herein mentioned; but the claims of those who have furnished material only, but not as laborers and mechanics, although entitled to liens therefor, shall be postponed to all the said mortgages herein mentioned; and no allowance is made or to be paid from the proceeds of said property, or from the money in the receivers' hands to any other persons than to those who may have such liens as aforesaid; nor to the assigns of those claiming to have liens, unless the assignments were made after the liens were perfected, respectively.
229 And it is hereby referred to Rufus E. Lester, esquire, as master in chancery, appointed for this purpose, to examine the said claims and report to this court with all convenient speed such as are liens as aforesaid, the respective amounts due thereon, and their respective priorities according to the terms of this reference.

Sixteenth. It is further ordered, adjudged and decreed, that the pro-

ceeds of sale, together with the balance of money and assets which may remain in the hands of the receivers, shall be distributed as follows, that is to say:

I. To the payment of the costs and expenses of these causes, and of the execution of their trusts on the part of the complainants, respectively, and all such fees to counsel as may be hereafter allowed and directed to be paid, and of the indebtedness of the receivers ascertained and liquidated at the time of the said sale.

II. To the payment of the taxes hereinbefore decreed to be due to the State of Georgia.

III. To the payment of the coupons for January and July, 1879, and the interest to be due thereon, on the bonds secured by the mortgage deed of trust now held by Morris K. Jesup, surviving trustee, as above provided.

IV. To the payment of such liens as may be decreed to be prior to the lien of the said mortgage or trust deed held by Eugene Kelly and Samuel A. Strang, trustees as aforesaid, and which have been
230 herein decreed to be paid out of the proceeds of the sale.

V. To the payment of the bonds and coupons, with interest on such coupons which have been hereinbefore decreed to be secured by the mortgage or deed of trust held by the said Eugene Kelly and Samuel A. Strang, trustees as aforesaid, in the manner hereinbefore provided, and in case the proceeds of such sale shall be insufficient to pay such bonds and coupons, together with interest on the coupons, the same must be paid pro rata and without preference.

Any surplus which may remain after distribution as aforesaid will remain subject to the further order of the court, and all questions touching such surplus and the distribution thereof are reserved.

Seventeenth. It is further ordered, adjudged, and decreed that all equities among the parties to these suits not disposed of or specially reserved in the foregoing decree, all questions of costs, expenses, and allowance, and fees of counsel, and all other questions not disposed of or specially reserved in the foregoing decree, but property arising under the same, or as proper subjects for further direction are reserved until after the sale and the report of the receivers of their proceedings thereon.

JOSEPH P. BRADLEY, *C. J.*
JOHN ERSKINE, *Judge.*

W. S. CHISHOLM,
Solicitor and Counsel for Compl'ts.

231 And afterwards, to wit, on the 30th day of August, A. D. 1879, the following proceedings were had, to wit:

Application for and allowance of appeal.

To the honorable Joseph P. Bradley, associate justice of the Supreme Court of the United States, and the honorable John Erskine, of the United States district and circuit courts of Georgia, both of whom heard said cause while sitting together in the circuit court for the southern district of Georgia, in which court said cause was pending:

The petition of Thomas Branch, John P. Branch, Frederick R. Scott, and Thomas P. Branch, partners under style of "Branch, Sons &
232 Co.; The South Georgia and Florida Railroad Company, a corporation under the laws of Georgia; W. B. Bennett, Wm. E. Smith, John Jackson, R. J. Bacon, Richard Hobbs, L. S. Ingraham, John A.

Davis, F. Barber, F. E. McLellan, W. E. Mitchell, George Spring, and L. E. Welch and H. E. Welch, partners under style of L. E. & H. E. Welch; M. P. Calloway, H. E. Welch, L. E. Welch, F. O. Welch, J. C. Byington, Sam'l Mayer, and Jesse W. Walters, all intervenors with Branch, Sons and Company in said cause, and stockholders with them in the South Georgia and Florida Railroad Company, respectively, shows that they are desirous of entering an appeal to the Supreme Court of the United States from the decision of your honors against them in said cause; that the amount in which they are interested and of which they are deprived by said decision, is over five thousand dollars in value; that this is true of the amount in which Branch, Sons & Co. alone are interested, and of which they are deprived by said
233 decree, and so of the amount owned by the South Georgia and Florida Railroad Company, and also of the amount owned by said Samuel Mayer; that they do not desire a supersed'as, and herewith tender a bond for two thousand dollars as security for costs in the cause with Branch, Sons & Co., Thomas P. Branch, C. H. Phinizy, and James G. Bailey, as bondsmen, which they pray may be approved, or, if deemed insufficient, that your honors will indicate what will be a sufficient security, and give your petitioners time to comply with the requirement.

The justification of the bondsmen and the usual citation is also herewith presented, with the request that one or both of your honors will sign the latter and grant an order allowing the appeal.

Your petitioners further shew that the decree from which they desire to appeal was rendered on the sixth day of June, 1879.

And petitioners will ever pray, &c.

234 W. W. MONTGOMERY,
Sol'r for Pet'r.

Order.

Upon the petition of Thomas Branch, John P. Branch, Frederick R. Scott, and Thomas P. Branch, partners under style of Branch, Sons & Co.; The South Georgia and Florida Railroad Company, a corporation under the laws of Georgia; W. B. Bennett, William E. Smith, John Jackson, R. J. Bacon, Richard Hobbs, S. L. Ingram, John A. Davis, E. Barber, F. E. McLellan, W. E. Mitchell, George Spring, M. P. Calloway, and L. E. Welch and H. E. Welch, partners under style of L. E. & H. E. Welch, L. E. Welch, H. E. Welch, F. A. Welch, J. C. Byington, Samuel Mayer, and Jesse W. Walters, petitioners pro interesse suo in the above-stated case, praying the allowance of an appeal to the Supreme Court of the United States in said cause , and tendering a bond for costs in the sum of two thousand dollars with Branch, Sons and Company Thomas P. Branch, C.
235 H. Phinizy, and James G. Bailey as bondsmen, which bond is hereby approved; and it appearing that the amount of the interest of Branch, Sons & Co. involved in said cause exceeds the sum of five thousand dollars, and that this is also true of the interest of the South Georgia and Florida Railroad Company as well as that of Samuel Mayer, also of that of the other petitioners combined—

It is ordered that an appeal be allowed and that the clerk of the United States circuit court for the southern district of Georgia send up to the October term, 1869, of the Supreme Court of the United States the record of said cause certified as required by law.

July 16th, 1879.

JOHN ERSKINE,
U. S. Judge.

And afterwards, to wit, on the 30th day of August, A. D. 1879, the following proceedings were had, in words following, to wit:

236 *Bond on appeal.*

Know all men by these presents that we, Branch, Sons and Company and Thomas P. Branch, C. H. Phinizy, and James G. Bailey, all of the city of Augusta, and State of Georgia, are held and firmly bound unto Morris K. Jesup, surviving trustee, and unto the Atlantic and Gulf Railroad Company, a corporation under and by virtue of the laws of Georgia, and unto each of them severally, in the sum of two thousand dollars, to be paid to said obligees, and each of them, and their and each of their successors and assigns, to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, dated this fifteenth day of July, A. D. 1879.

Whereas Thomas P. Branch, John P. Branch, Frederick R.
237 Scott, and Thomas Branch, partners under style of Branch, Sons & Co., William E. Smith, John Jackson, R. J. Bacon, Richard Hobbs, S. L. Ingraham, Jno. A. Davis, E. Barber, F. E. McLellan, W. E. Mitchell, George Spring, M. P. Calloway, L. E. & H. E. Welch, H. E. Welch, L. E. Welch, F. O. Welch, J. C. Byington, Samuel Mayer, Jesse W. Walters; The South Georgia and Florida Railroad Company, corporation under the laws of Georgia, and W. B. Bennett, all the above-named individuals and firms stockholders of said The South Georgia and Florida Railroad Company, and all of said parties petitioners in said petition pro interesse suo, have taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled cause by the fifth circuit court of the United States for the southern district of Georgia, so far as said decree decides against their interests as set forth in said decree:

Now, therefore, the condition of this obligation is such, that if the above-named appellants shall prosecute their said appeal to
238 effect, and answer all costs if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

BRANCH, SONS & CO. [SEAL.]
T. P. BRANCH. [SEAL.]
C. H. PHINIZY. [SEAL.]
JAMES G. BAILIE. [SEAL.]

Sealed and delivered in presence of—
HENRY W. CARR,
U. S. Commissioner Southern Dist. of Ga.

SOUTHERN DISTRICT OF GEORGIA,
City of Augusta:

Thomas P. Branch, who swears he is a member of the firm of Branch, Sons & Co., Charles H. Phinizy, and James G. Bailie, obligors to the foregoing bond, depose and say, each for himself, that he is a freeholder, residing in said district, and that he is worth the sum of two thousand dollars over and above his debts and liabilities, and the amount exempted from levy and sale by the laws of Georgia; and the said Thomas P. Branch swears that said firm of Branch, Sons & Co. is worth said amount over and above its debts, liabilities, and exemptions.

T. P. BRANCH.
239 C. H. PHINIZY.
JAMES G. BAILIE.

Sworn to and subscribed before me this fifteenth day of July, A. D. 1879.

HENRY W. CARR, [SEAL.]
U. S. Commissioner Southern Dis't of Ga.

Bond approved July 16, 1879.

JOHN ERSKINE,
U. S. Judge.

And afterwards, to wit, on the said 30th day of August, A. D. 1879, the following proceedings were had, to wit:

240 *Petition for appeal to Supreme Court.*

To the honorable the Supreme Court of the United States:

The appeal of Thomas Branch, John P. Branch, Frederick R. Scott, and Thomas P. Branch, partners under style of Branch, Sons & Co.: The South Georgia and Florida Railroad Company, a corporation under the laws of Georgia; W. B. Bennett, William E. Smith, John Jackson, R. J. Bacon, Richard Hobbs, L. L. Ingraham, John A. Davis, E. Barber, F. E. McLellan, W. E. Mitchell, George Spring, and L. E. Welch, and H. E. Welch, partners under style of L. E. & H. E. Welch; M. P. Calloway, H. E. Welch, L. E. Welch, F. O. Welch, J. C. Byington, Samuel Mayer, and Jesse W. Walters, all intervenors in said cause, and stockholders in The South Georgia and Florida Railroad Company, respectfully showeth, that on the day of the above-named appellants filed their petition, and on the day of 1879, certain amendments thereto, pro interesse suo, in the above-
241 stated case, which is a bill filed by the said trustee to foreclose a mortgage in behalf of the bondholders of defendant for nonpayment of the bonds, said petition setting forth that said bill was seeking not only to foreclose said mortgage upon the Atlantic and Gulf Railroad proper, but also upon that portion of the South Georgia and Florida Railroad running between Albany and Thomasville, in the State of Georgia, which said bill assumed to be a part of the Atlantic and Gulf Railroad, under certain alleged contracts entered into between the Atlantic and Gulf Railroad and the South Georgia and Florida Railroad Companies, copies of which contracts are attached to said petition, pro interesse suo, as exhibits; that under said contracts, said Atlantic and Gulf Railroad Company had issued what was called guaranteed scrip of their road, with which the said company had paid for said South Georgia and Florida Road, or rather that part of it running between Albany and Thomasville, and that this scrip was distributed among the stock-
242 holders of the South Georgia and Fla. R. R. Co. in lieu of ordinary stock certificates; that the scrip was an obligation on the part of the A. & G. R. R. Co. to pay seven per cent. annually (i. e., three and a half per cent. every six months) on the par value of the shares represented by it; that said contracts between the two railway companies were void as ultra vires and against public policy, or a sale which put the So. Ga. & Fla. R. R. Co. and its stockholders in the position of creditors, with the right to attach said property sold, to wit, *the South Georgia and Florida Rail' Co. and its stockholders in the position of creditors, with the right to attach said property sold, to wit*, the South Georgia and Fla. Railroad, and thus make themselves preferred credit-

ors under the law of Georgia, but which could not be done, for the reason that said property was in the hands of receivers of the court, or that the contracts between the railways was, in legal effect, a
243 lease of that part of the So. Ga. & Fla. R. R. running from Albany to Thomasville to the A. & G. R. R. Co., which lease the latter company had the chartered power to make, and praying that the said contracts between the railways might be cancelled and the property in dispute delivered by the receivers to the So. Ga. & Fla. R. R. Co., or if the sale was valid that the So. Ga. & Fla. R. R. Co. be decreed to be preferred creditors as to the road sold by them, inasmuch as the A. & G. R. R. Co. had failed since November, 1874, to pay the interest on said scrip, or if said contracts amounted to a lease that the same be rescinded for non-compliance on the part of the A. & G. R. R. Co., with the terms of the contracts and the property delivered by the receivers to the So. Ga. & Fla. R. R. Co.

Which petition pro interesse suo came from the United States circuit court for the southern district of Georgia for a hearing as upon demurrer, at the April term of said court, 1879, and the court, on
244 the sixth day of June, 1879, rendered a decision holding said contracts between the railways valid, and that the stockholders of the South Georgia and Florida Railroad Co. became thereby nothing more than preferred stockholders of the A. & G. R. R. Co.

Appellants further shew that the amount of said stock of the So. Ga. and Fla. R. R. Co., in which Branch, Sons & Co. are interested, and of which they are deprived by said decision (said A. & G. R. R. Co. being entirely insolvent) is over five thousand dollars in value, and the same is true of that of the South Georgia and Fla. Railroad Co., as also of Samuel Mayer.

Wherefore these appellants appeal from so much of said decree as effects their claims, and respectfully pray that the decree of said circuit court, with all the pleadings and proceedings in the cause, may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the cause anew, and
245 that the decree of the circuit court, so far as it effects the rights of appellants, may be reversed, and such decree made as to the Supreme Court shall seem just.

W. W. MONTGOMERY,
Sol'r for Appellants.
CHAS. N. WEST,
Of Counsel.

And afterwards, to wit, on the 26th day of August, A. D. 1879, the following proceedings were had, to wit:

Acknowledgement of service.

Service of a copy of the within petition for appeal to the Supreme Court acknowledged, and further service waived.
This 26th day of August, 1879.

W. S. CHISHOLM,
Solicitor for M. K. Jesup, Sur. Trustee.
R. FALLIGANT,
Solicitor Atlantic & Gulf R. R. Co.

246 *Clerk's certificate.*

UNITED STATES OF AMERICA,
Southern District of Georgia, ss:

I, Willard P. Ward, clerk of the fifth circuit court of the United

States for the southern district of Georgia, do hereby certify that I have compared the writings annexed to this certificate, and that they are true copies of their respective originals, and are correct transcripts therefrom, now on file and remaining of record in my office in the equity cause of Morris K. Jesup, surviving trustee, &c., compl't, and The Atlantic and Gulf Railroad Co., and Branch, Sons and Co. et al., intervenors, defendants, to wit: Original bill, order appointing receivers, order confirming receivers, supplemental bill, and order on same, answer of defendant, order allowing petition pro interesse suo of Branch, Sons & Co. et al. to be filed; petition pro interesse suo &c.; order dismissing petition pro interesse suo of Branch, Sons & Co. et al.; final decree in cause, application for and allowance of appeal, bond on appeal, petition for appeal to Supreme Court, citation and assignment of error, application and order to amend, amendment, petition and order making W. B. Bennett party to petition.

In testimony whereof I have hereunto set my hand, and duly affixed the seal of the said court, at Savannah, in said district, this third day of October, A. D. 1879, and of the Independence of the United States the 104th.

[SEAL.] WILLARD P. WARD, *Clerk.*

247 *Citation.*

To Morris K. Jesup, surviving trustee, and the Atlantic and Gulf Railroad Company, a corporation under the laws of Georgia:

Whereas Thomas Branch, John P. Branch, Frederick R. Scott, and Thomas P. Branch, partners under style of Branch, Sons & Co.; the South Georgia and Florida Railroad Company, a corporation under the laws of Georgia; W. B. Bennett, William E. Smith, John Jackson, R. J. Bacon, Richard Hobbs, L. L. Ingraham, John A. Davis, E. Barber, F. E. McLellan, W. E. Mitchell, George Spring, & L. E. Welch and H. E. Welch, partners under style of L. E. & H. E. Welch; M. P. Calloway, H. E. Welch, L. E. Welch, F. O. Welch, J. C. Byington, Samuel Mayer, and Jesse W. Walters have appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of Georgia, made in your favor, the said Morris K. Jesup, sur-
248 viving trustee, and the Atlantic and Gulf Railroad Company, and have filed the security required by law. You are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Atlanta, Georgia, the 16th day of July, 1879.

JOHN ERSKINE,
U. S. Judge.

Filed Aug. 30, 1879. W. M. Heyward, deputy clerk.

Acknowledgement of service.

Service of a copy of the within citation acknowledged and further service waived this 26th day of August, 1879.

W. S. CHISHOLM,
Sol'r for M. A. Jesup, Sur. Trustee.
R. FALLIGANT,
Sol'r for Atlantic and Gulf R. R. Co.

Filed August 30, 1879. W. M. Heyward, deputy clerk.

249 *Assignment of error.*

Supreme Court of the United States.

MORRIS K. JESUP, SURVIVING TRUSTEE,
vs.
THE ATLANTIC AND GULF RAILROAD COMPANY, and Branch, Sons & Co. et al., interveners.

Afterwards, to wit, on the second Monday of October, in this same term, before the justices of the Supreme Court of the United States, at the Capital, in the city of Washington, comes the said intervenors, by Charles N. West and W. W. Montgomery, their solicitors, and say that in the record and proceedings aforesaid there is manifest error in this, to wit: 1st. In that the circuit court held that the Atlantic and Gulf Railroad Company, as successor to the franchises of the Savannah, Albany and Gulf Railroad Company, had the power to purchase a
250 railway running from a point on the line of the *line of the* Atlantic and Gulf Railroad to Albany.

2d. In that the circuit court held that the Atlantic and Gulf Railroad Company had the power to make the purchase of that part of the South Georgia and Florida Railroad running from Thomasville Albany, under that clause of its charter which conferred upon it "all the privileges, immunities, and exemptions granted to the Central Railroad and Banking Company and the Georgia Railroad and Banking Company, or either of them, by the acts incorporating said companies and the several acts amendatory thereof."

3d. In that the circuit court held that the South Georgia and Florida Railroad Company had the power to sell part of its road under that clause of its charter which conferred upon it all the powers of the Savannah and Albany Railroad Company, and again, under its own chartered power, to incorporate its stock with the stock of any other
251 company on such terms as might be mutually agreed upon.

And the said intervenors pray that so much of said decree as decides adversely to their interests may be reversed, annulled, and altogether held for nought, and that they may be restored to all things which they have lost by occasion of the said decree.

CHARLES N. WEST,
W. W. MONTGOMERY,
Sol'rs for Intervenors.

Filed in office Aug. 30, 1879. W. M. Heyward, deputy clerk.

(Indorsement on cover:) No. 81. Thomas Branch, John P. Branch, Frederick R. Scott, and Thos. P. Branch, partners as Branch, Sons & Co., The South Georgia & Florida Railroad Company, W. B. Bennett et al., appellants, vs. Morris K. Jesup, surviving trustee, &c., & The Atlantic and Gulf Railroad Company. S. Georgia C. C. U. S. Filed 16th October, 1879.

ADDITION TO RECORD 81.

1 *Stipulation of counsel and addition to record.*

In the United States Supreme Court, October term, 1882.

BRANCH SONS & CO. ET AL., INTERVENORS, &C., *et al.*, appellants,
and
MORRIS K. JESUP, SURVIVING TRUSTEE, & THE Atlantic & Gulf R. R. Co., appellees. } # 81.

It is agreed between counsel in the above stated case that the opinion filed in said case is a part of the record thereof, and that a copy of said opinion may be filed in the Supreme Court of the United States with the same force and effect as if originally incorporated by the clerk of the circuit court with the transcript of the record in said case, counsel hereby consenting to the granting of such order by the Supreme Court at any time before the trial of said case as may be necessary to effectuate this agreement, and make a copy of said opinion a part of the transcript of the record in said case.

October 2omd, 1882.

W. S. CHISHOLM,
I. P. FALLAGANT,
Solicitors for Appellees.
W. W. MONTGOMERY,
SALEM DUTCHER,
Sol'rs for App'l'ts.

(Indorsed:) No. 81. In the U. S. Supreme Court, October term, 1882. Branch & Sons & Co., et al., appellants, v. Morris K. Jesup & A. & G. R. R. Co., appellees. No. 81. Agreement.

(Stamp:) Office Supreme Court U. S. Filed Oct. 6, 1882. James H. McKenney, clerk.

2 BRANCH SONS & CO. ET AL., INTERVENORS pro interesse suo, appellants,
and
THE ATLANTIC & GULF RAILROAD CO., DEF'T in equity case of M. K. Jesup, sur. trustee, vs. said company, appellee.

Writ of error from cir. c't so. dist. Ga. to Supreme Court of U. S.

Opinion.

Petition of Branch Sons & Co., holders of preferred stock of Atl. & Gulf R. Co. given in pay't of the South Ga. & Florida R. R., praying, for themselves and others in like case who may come in, &c., to be first paid out of the separate proceeds of that road after satisfaction of the separate mortgages on the same.

The petition sets forth certain agreements for the purchase of the So.

Ga. & Fla. R. by the Atl. & Gulf R. Co., the first being dated Jan. 19th, 1868; the second, Jan. 15th, 1869; the third, Sept. 1st 1869; the fourth and last being dated Jan. 8, 1876, and being a conveyance or deed of bargain & sale for the said railroad.

A copy of one of the stock certificates is appended to the petition, and is in the regular form of a certificate of stock drawing interest. It is headed "$6,600. No. 250. 66 shares. Atlantic & Gulf Railroad of Georgia. Special guaranteed seven per cent. stock, issued under a contract with the South Georgia & Florida R. R. Co., bearing date Jan'y 2d, 1869, for the construction of the South Georgia & Florida Railroad." It certifies that Branch & Sons, or bearer, is entitled to 66 shares on
3 which the par value of $100 has been paid of the special stock of the Atlantic and Gulf R. R. Co., on which interest from date is perpetually guaranteed at the rate of seven per cent. per annum, payable semi-annually at the office of the company in Savannah, on the 1st day of May & Nov. in each year. This scrip to be renewed, with other like scrip, when the blanks for interest on the back hereof are filled. Witness, &c., sig. of pres't, & seal of co., & dated 1 Nov., 1872, with endorsements of interest paid to Nov. 1, 1874.

A similar petition was filed by W. B. Bennett. An amendment was afterwards allowed to be made to the original petition, joining The South Georgia Railroad Co. therein, and alleging that the contract was ultra vires, and void, and against public policy, and that neither company under its charter had any power to make such a contract. That at most it was but a lease of the road, and should be rescinded for non-compliance with its terms. But, if held a valid conveyance, still the petitioners, being bona fide holders of the scrip, & some of them original holders, should have the relief prayed in the original petition.

The question whether the two companies had power to make the contract which they did, depends on the condition of their respective charters at the time.

4 The Atlantic and Gulf Railroad Company was constituted by the consolidation of two companies in 1863, under an act of the legislature passed April 18th, 1863. These were the Savannah, Albany & Gulf Railroad Company, chartered Dec. 25th, 1847, and The Atlantic and Gulf Railroad Company, chartered 27 February, 1856. The consolidated company took all the immunities, franchises, and privileges granted to both companies by their original charters.

The original charter of the Savannah, Albany and Gulf Railroad Company invested it with "all the rights, privileges, and immunities which, by the laws of Georgia, were held and enjoyed by any other incorporated railroad company or companies." The original charter of the Atlantic and Gulf Railroad Company conferred upon it "all the privileges, immunities, and exemptions granted to the Central Railroad and Banking Company and the Georgia Railroad and Banking Company, or either of them, by the acts incorporating said companies, and the several acts amendatory thereof."

From these provisions it results that the consolidated company had all the rights and powers granted to any other company whatever prior to Dec. 25, 1847, and all such as had been granted either to the Central or the Georgia Railroad Companies prior to February 27th, 1856.

5 It is not shown that any powers germane to the subject under discussion can be found in the charters referred to going further than "to have, purchase, possess, enjoy, and retain lands, rents, hereditaments, tenements, goods, chattels and effects of whatever kind, nature, or quality the same may be, and the same to sell, grant, demise, alien, or dispose of."

This enumeration of powers is sufficient to enable the company to purchase a railroad if not precluded from doing so by the confined objects and purposes of its charter, but would not be sufficient without the aid of other legislation to enable it to purchase & possess a line of road outside of the limits prescribed to it. An inspection of the charter of The Savannah, Albany and Gulf Railroad Company, however, shows that the road purchased in the present case was not without but precisely within the limits of that charter. The charter gave the right to construct a railroad communication between the city of Savannah and the city of Albany with such continuations and branches as might be requisite. Now, since it had the power to purchase there is no reason why it should construct a new road the entire distance if it found one to its hand for a portion of the route which it could purchase. The South Georgia and Florida
6 Railroad Company had just such a road, or charter for a road, between Thomasville and Albany as the Savannah, Albany and Gulf Railroad Company and the consolidated company entitled to its franchises required, and they purchased it. We do not see how this purchase can be regarded as ultra vires of the consolidated Atlantic and Gulf Railroad Company.

Next, as to the powers of the South Georgia and Florida Railroad Company to sell. This company was authorized by its charter, dated Dec. 22, 1857, amongst other things, to construct a railroad from Albany to Thomasville and from thence to the Florida line, about ten miles beyond Thomasville, and the company was invested with all the powers and privileges granted to The Georgia and Florida Railroad Company, of which it was an offshoot. The latter company by its charter, dated Jan. 22d, 1852, had all the powers of The Savannah and Albany Railroad Company given to it by its original charter and amendments not inconsistent with the rights and privileges of that company. It was further endowed with power, at any time, to incorporate its stock with the stock of any other company on such terms as might be mutually agreed upon.

Now, we have seen that The Savannah and Albany Company had
7 all the powers granted to any other railroad company in the State, and that the powers of the Georgia and Central Companies which were incorporated in 1833 extended to the purchase and sale of any kind of property whatever. The South Georgia and Florida Railroad Company, therefore, not only had the power to purchase and sell but the still higher power of consolidating with any other company.

In view of these large grants of power, and in view of the maxim that the greater includes the less, we can have no doubt that the Atlantic and Gulf Railroad Company, and the South Georgia and Florida Railroad Company, had full power to make the contract which is brought into question, and that the sale of the line of the latter between Thomasville and Albany was a valid sale. It included all the franchises necessary to run and operate the road.

This view of the case disposes of all those objections which are founded upon the supposed illegality of the contract as being ultra vires of the parties to it.

We are further of opinion that inasmuch as the line thus purchased by the Atlantic and Gulf Railroad Company was within its chartered limits, and came in place of a road which it might have constructed itself, under its own charter, that it is covered by both the first and
8 second mortgages of that company, but of course not to the prejudice of the priorities due to the separate mortgages on that branch of the road.

This conclusion renders it unnecessary to consider the position of the petitioners in which they are placed by their own conduct in taking the preferred stock referred to, receiving interest thereon for long years, and generally acquiescing in the whole transaction. We think that they are entirely without equity, and the prayer of the petitioners is denied.

We may add in this connection, that we have no doubt of the power of the Atlantic and Gulf Railroad Company to mortgage its road, and the franchises therewith connected, and necessary to operate and run the same, not including the franchise of being a corporation. If it had the power to sell it had the power to mortgage, which is the lesser power, and included therein. This is an old doctrine, and has been confirmed by the decision of the supreme court of Georgia, Wayne vs. Middleton, 2 Kelly, 283, 404. No express reason to borrow money was necessary, for that is implied in the creation of all business corporations, although, in fact, express power was given to the Central Railroad
9 Company, in Dec., 1845, to borrow money on its bonds, and this power, by the terms of its charter, was therefore conferred upon the Savannah, Albany and Gulf Railroad Company, and, hence, upon the Consolidated Atlantic and Gulf Railroad Company.

We think the mortgages are valid, and a lien upon the entire road of the company, including the portion lying between Thomasville and Albany, and that a decree should be made for the foreclosure and sale of the road, its equipment and franchises, for the purposes of raising the amount due on the mortgage bonds, as prayed in the bill of complaint.

A point, however, has been raised, which ought to be noticed here, that the first mortgage was not acknowledged or proved before a proper magistrate. The execution appears to have been made with all due solemnities, and in the proper form, but the acknowledgement was made before and certified by a justice of the supreme court of the State of New York. It is contended that this is not a compliance with the laws of Georgia to authorize the recording of the instrument in the proper offices. It is admitted that it is sufficient in the case of a deed, but that a mortgage, if acknowledged outside of the State, should be acknowledged before a consul or commissioner of the State of Georgia. This objection is ex-
10 tremely technical, but, if valid, we must decide that the registry of the document is not of itself notice to parties subsequently dealing with the property. We think, however, that the objection cannot prevail. The instrument in question is not a mortgage in form, but a deed, of trust, and without inquiring whether even a mortgage is not itself a deed so as to be governed by the provisions relating to deeds, we think that this document is technically a deed, and that its execution and acknowledgement in

such manner and form as are required in the case of deeds is sufficient. The objection, therefore, cannot prevail.

(Endorsed:) U. S. circuit court, so. dist. of Georgia. In equity. M. K. Jesup, surviving trustee, compl't and Atlantic and Gulf Railroad Co. def't. Opinion of Mr. Justice Bradley on petition of sundry petitioners. Filed .

11 UNITED STATES OF AMERICA,
Southern District of Georgia:

I, William M. Heyward, deputy clerk of the circuit court of the United States of America for the southern district of Georgia, hereby certify that the writing annexed to this certificate is a true copy of its original on file & remaining of record in this office, to wit, the opinion of Justice Bradley in the case of Morris K. Jesup, surviving trustee, vs. The Atlantic & Gulf Railroad Co. & Branch, Sons & Co. et al. intervenors; and that said opinion, together with the record heretofore sent to the Supreme Court of the United States in said cause, to wit, the original bill, the order appointing receivers, order confirming receivers, supplemental bill & order on the same, answer of defendant, order allowing petition pro interesse suo of Branch, Sons & Co. et al. to be filed, petition pro interesse suo, order dismissing petition pro interesse suo of Branch, Sons & Co. et al., final decree in cause, application for & allowance of appeal, bond on appeal, petition for appeal to Supreme Court, citation & assignment of errors, application & order to amend, amendment, petition & order making W. B. Bennett party to petition, is a full, complete, true, & perfect transcript of
12 the record and all proceedings had on the trial of the issue formed by the filing of the petition pro interesse suo, by Branch, Sons & Co. et al., as stockholders of the South Georgia & Florida Railroad Company, & by said company in said case of Jesup vs. The Atlantic & Gulf Railroad Co., so far as the same are of record in this office; and that said transcript, as now perfected, contains in itself, without references, aliunde all the papers, exhibits, depositions, & other proceedings which are necessary to the hearing in the Supreme Court of said issue.

In witness whereof I have caused the seal of the said circuit court to be hereunto affixed, at the city of Savannah, in the southern district of Georgia, this thirteenth day of September, in the year of our Lord one thousand eight hundred & eighty-two, & of the Independence of the United States the one hundred & seventh.

[SEAL.] WILLIAM M. HEYWARD,
Deputy Clerk U. S. Circuit Court, So. Dist. of Georgia.

(Indorsed:) Supreme Court U. S. 1882. October term. No. 81. Branch, Sons & Co. & al., app'ts, vs. Jesup, surv'g trustee, &c. Stipulation of counsel & addition to record. Filed 6th Oct'r, 1882.

(Stamp:) Office Supreme Court U. S. Filed Oct. 6, 1882. James H. McKenney, clerk.

NOV 6 1882

NO. 81.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1882

BRANCH, SONS & CO., *et. al.*, Intervenors, Appellants.

vs.

MORRIS K. JESUP, Surviving Trustee, *et. al*, Appellees.

Appeal from the Circuit Court for the Southern Dist. Georgia.

BRIEF FOR APPELLANTS.

W. W. MONTGOMERY.

SUPREME COURT OF THE UNITED STATES.

MORRIS K. JESUP, Surviving Trustee,
vs.
THE ATLANTIC & GULF RAILROAD COMPANY.

STATEMENT.

On December 20th, 1867, the Atlantic & Gulf Railroad Company mortgaged its road, then in course of construction from Savannah to Bainbridge, Ga., and partially built, to John Gardner and Morris K. Jesup Trustees, to secure its bonds to the amount of $2,000,000, with condition that upon default of payment of coupons, principal was to become due and trustees, or survivor, might sell the road.

On June 19th, 1868, the South Georgia and Florida Railroad Co., a company chartered by the Legislature of Georgia to build a road from Albany, Georgia, to the Florida line, crossing the Atlantic & Gulf Railroad at Thomasville, Ga., agreed with the Atlantic & Gulf Railroad Company "to build its railroad, from Thomasville to Albany, commencing at Thomasville, and completing and turning over the same to the A. & G. R. R. Co. as completed in sections, and when completed to Albany to incorporate the stock with the guaranteed stock of the A. & G. R. R. Co., so that the said road from Thomasville to Albany will form a branch of the A. & G. R. R."

The A. & G. R. R. Co. agreed, in consideration of the foregoing, "to receive, occupy, work and maintain each section of the South Georgia & Florida Railroad as it shall be completed, as aforesaid, from Thomasville to Albany, and to pay seven per cent. per annum, payable semi-annually, on the first days of May and November, on the actual cost of each section from the time of its completion and its reception by the A. & G. R. R. Co."

It was further "mutually agreed between the parties that when the South Georgia & Florida Railroad shall be completed from Thomasville to Albany, or as soon thereafter as practicable, the stock of the South Georgia & Florida Railroad Co. shall be incorporated with the stock of the A. & G. R. R. Co., as aforesaid, and seven per centum of the said actual cost of the said S. G. & F. R. R. shall continue to be paid on the stock after the incorporation in the same manner as before. When the stock shall have been incorporated, as aforesaid, all the rights, privileges, and *franchises* of the S. G. & F. R. C. Co., *so far as relates to the road from Thomasville to Albany, shall vest in the A. & G. R. R. Co.*, and the said road shall be a branch of the said A. & G. R. R."

On January 15th, 1869, the foregoing contract was modified so as to allow the S. G. & F. R. R. Co. to issue bonds endorsed by the State, "secured by mortgage on its road, franchises, and other property, with a view to its investment (the investment of the proceeds of the bonds so secured, it is presumed is meant) in rail, spikes, chairs, etc., and for the further construction of said road; and that in lieu of issuing said guaranteed stock for the amount of said bonds, the A. & G. R. R. Co. will pay said bonds

as they severally become due, and that they will receive said road and pay the balance of stock that may be due for constructions, subject to said mortgage and bonds and coupons attached, and the A. & G. R. R. Co. will bind itself to save harmless the S. G. & F. R. R. Co., from payment of said bonds, and the interest thereon after the reception of the road." "That the A. & G. R. R. Co. consent and agree that said contract may and shall be further modified so as to authorize the President of the A. & G. R. R. Co. to issue guaranteed stock to contractors in payment of monthly estimates, as said estimates may be rendered."

The bonds, to the amount of $600,000, were afterwards issued and endorsed by the State and sold by the S. G. & F. R. R. Co.

On September 1st, 1869, said agreements were further modified so as to allow the S. G. & F. R. R. Co., to issue $200,000 (printed in record "ten") of bonds to be secured by second mortgage, and by endorsement of the A. & G. R. R. Co., the money raised by the sale of the second mortgage bonds to be applied, as far as it would go, to the construction of the S. G. & F. R. R., and the balance necessary to complete the road to be paid for under first agreement, to-wit: By guaranteed seven per cent. stock of A. & G. R. R. Co. The second mortgage bonds were issued and sold, and the road completed from Thomasville to Albany.

Guaranteed scrip, to the amount of some $300,000, was issued under these contracts and paid to the contractors, and thus got into circulation being payable to bearer.

The individual intervenors hold over $50,000 worth of this scrip, some as original contractors, others as *bona fide* holders for value."

On January 8th, 1876, the S. G. & F. R. R. Co. in conformity with previous agreements granted, bargained, sold, etc., to the A. & G. R. R. Co. (in consideration of the latter's endorsement of the second mortgage bonds, and their engagement to pay coupons and principal of both series of bonds, and for certain guaranteed seven per cent. scrip then delivered to the S. G. & F. R. R. Co., for their stockholders), "so much of said S. G. & F. R. R. as lies, or is located, between the said towns or cities of Thomasville and Albany, in the State of Georgia, together with all lands, right of way," etc. "Also including all the bridges and culverts erected and made on the line of said road by said party of the first part (S. G. & F. R. R. Co.), between said two terminal points, including, also, the *franchises* of the party of the first part to construct and use said S. G. & F. R. R. between the above mentioned termini, Thomasville and Albany, Georgia; to have and to hold all and singular the estate and property, real and personal, and all the *rights and franchises* of the said party of the first part as are hereinbefore set forth and particularly described, *acquired under its charter* and by construction, and herein and hereby intended to be conveyed to the said party of the second part, and its successors as assigns in *fee simple forever.*"

By the resolutions passed October 10th, 1870, of the President and Board of Directors of the S. G. & F. R. R. Co., authorizing its President to make the deed of sale of January 8, 1876, which resolutions are embodied in said deed, the S. G. & F. R. R. Co. expressly reserve "the other franchise, or rights of building and equipping a railroad from Thomasville to Florida line under the charter of the said S. G. & F. R. R. Co." Record, page 57.

On November 1st, 1874, the A. & G. R. R. Co. failed to pay the interest due on the guaranteed scrip, and have since continually failed to pay interest on said scrip. Record, p. 46-58.

At April Term, 1879, Morris K. Jesup, as surviving trustee, John Gardner having died, filed his bill in the U. S. Circuit Court for the South-

ern District of Georgia, against the A. & G. R. R. Co. to foreclose the mortgage under which he was trustee, claiming that the mortgage covered the S. G. & F. R. R., admitting that the two mortgages given by the S. G & F. R. R. Co. upon its road ranked the mortgage of complainant, but ignoring the guaranteed scrip given by the A. & G. R. R. Co. in part payment for the purchase of the S. G. & F. R. R. as hereinafter set forth. Thereupon and pending said cause, this intervention was filed by the present appellants, the S. G. and F. R. R. Co. and the holders of the guaranteed scrip, claiming that the sale of the S. G. & F. R. R. to the A. & G. R. R. Co. was *ultra vires*, against public policy, and hence void, and prayed a decree to that effect, or that at most it was but a lease, and as the A. & G. R. R. Co. had failed to comply with their part of the contract, the intervenors prayed a rescission of the lease and that the road be restored to the S. G. & F. R. R. Co. If neither of these views were correct then that the intervenors stood in the position of vendors of the S. G. & F. R. R. with the purchase money unpaid, and would be entitled to attach the S. G. & F. R. R. for the purchase money but for the fact that it was now in the hands of the Court, a Receiver, having, under order of the Court, taken possession of the A. & G. R. R., and all branches thereof claimed by complainant to be covered by his mortgage. The intervenors therefore prayed that their superior rights might be recognized and protected, and for general relief. Record, p. 60.

The decision was adverse to the claims of the intervenors, except as to their claims that if the sale of the S. G. & F. R. R. to the A. & G. R. R. Co. were valid then that the intervenors stood in the position of vendors of the S. G. & F. R. R. to the A. & G. R. R. with the purchase money unpaid, and were, under the laws of Georgia, entitled to priority of payment out of the proceeds of the sale of the S. G. & F. R. R. which they prayed might be sold subject to the two mortgages given by the S. S. G. & F. R. R. Co., and the proceeds applied to the payment of their claim for purchase money, and the excess, if any, applied as the Court might direct.

No decision was expressly rendered on this point. The general effect of the decision, however, was to overrule this position of the intervenors also. The Court holding "we think that they (the interven ors) are entirely without equity, and the prayer of the petitioners is denied."

CHARTERS.

On January 22d, 1852, the Georgia and Florida Railroad Company were incorporated by the following Act. See Acts of 1851-2, p. 151.

An Act to incorporate the Georgia and Florida Railroad Company, and to confer certain powers and privileges therein mentioned.

Approved January 22, 1852.

126. SECTION I. *Be it enacted by the Senate and House of Representatives of the State of Georgia in General Assembly met, and it is hereby enacted by the authority of the same*, That Joseph Bond, P. M. Nightingale, James M. Mercer, N. W. Collier, W. W. Cheever, Benjamin Jourdan, David A. Vason, Nelson Tift, Michael Young, Thomas Jones, Elijah R. Young, Thomas B. Wynn, M. B. Jones, W. G. Ponder, Hardy Bryan, James L. Seward, and their associates, or a majority of them, and assigns, are hereby constituted a body politic and corporate, under the name of the Georgia and Florida Railroad Company, and under said corporate name, they, or a majority of

them, shall have authority to construct a railroad from Oglethorpe, or some other point on the Southwestern Railroad, to Albany, in Baker county; and they shall also have authority to construct a railroad from Albany to Thomasville, in Thomas county, and from thence to the Florida line, in the direction of Tallahassee. And the said Company are also authorized to construct a Plank Road, or a graded or a Macadamized Road, in connection with, or in lieu of their railroad. And for the purpose of constructing said road, or roads, procuring the right of way, and managing all the affairs of said Company, they are hereby invested with the same powers and privileges which have been granted to the Savannah and Albany Railroad Company by its original Charter, and the Acts amendatory thereof, which are not inconsistent with the rights and privileges which have been granted to the Savannah and Albany Railroad Company.

Sec. II. *And be it further enacted*, That the Georgia and Florida Railroad Company may at any time incorporate their stock with the stock of any other company, on such terms as may be mutually agreed upon by such companies; *Provided*, That the road and other property of this Company shall be subject to such taxation as the Legislature may deem equitable and just.

128, Sec. III. *Be it further enacted*, That the said Georgia and Florida Railroad Company, shall have authority to make all such by-laws, rules and regulations, for managing the affairs of said Company, as they shall deem proper, not inconsistent with the Constitution of this State, or of the United States; and may by said by-laws, from time to time, determine the amount of stock necessary to carry out the purposes of said Company, and the construction of said road or roads.

On December 25th, 1847, the Savannah & Albany Railroad Co. was incorporated under the following Act:

AN ACT to incorporate the "Savannah and Albany Railroad Company," with power to extend the said road, and to construct branches; and to amend the acts incorporating the Georgia Railroad and Banking Company.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Georgia in General Assembly met, and it is hereby enacted by the authority of the same*, That for the purpose of constructing a railroad communication between the city of Savannah, on the Savannah river, and the city of Albany, on the Flint river, together with such continuation and branches of said road as may be requisite, Leonidas B. Mercer, Joseph Bond, John Tompkins, Lott Warren, A. B. Lawton, J. M. Mercer, David A. Vason, and such other individuals or corporations as may be associated with them, and their assigns, shall hereafter be a body corporate by the name and style of the Savannah and Albany Railroad Company, and by said corporate name, and in such corporate capacity, they are hereby invested with all the rights, privileges and immunities which by the laws of Georgia are held or enjoyed by any incorporated railroad company or companies, subject to the restrictions connected with and necessarily consequent upon such rights, privileges and immunities, for the purposes hereinafter specified.

Sec. 4. *And be it further enacted*, That this incorporation shall continue for the term of 30 years, and no longer.

Sec. 5. *And be it further enacted*, That the object of the Company shall be to construct a railroad communication between Savannah, or some point

on the Central Railroad near Savannah, if the respective Companies shall agree upon a junction of roads, and Albany, on the Flint river, by such route as the said Company may select, with such branch roads towards the North and towards the South, from said road to such point or points as they may deem requisite; and the said Company may at any time extend the said road to any point or points on or across the Chattahoochee river; *Provided*, They shall not obstruct the free navigation of that or any other river which they may cross: *And provided further*, That they shall not, by extension, violate the chartered and vested rights of the Southwestern Railroad Company.

SEC. 6. *And be it further enacted*, That the said Company shall pass such by-laws for the regulation of its affairs, as are not inconsistent with the provisions of this act, the Constitution of this State or of the United States.

SEC. 7. *And be it further enacted*, That if said Company shall not in good faith have commenced said road by the first day of November, 1849, or shall not have completed the same within six years thereafter, the rights, privileges and immunities herein granted shall be forfeited.

CHARLES J. JENKINS,
Speaker of the House of Representatives.

ANDREW J. MILLER,
President of the Senate.

Approved December 25, 1847.

GEORGE W. TOWNS, *Governor.*

On November 20th, 1851, said Act was amended as follows:

AN ACT to amend an Act to incorporate the Savannah and Albany Railroad Company, with power to extend the said road, and to construct branches, and for other purposes, approved Dec. 25th, 1847. so as to extend the time for the commencement and completion of said road, and the continuance of the said Charter.

Approved November 20th, 1851.

74. SECTION I. *Be it enacted by the Senate and House of Representatives of the State of Georgia in General Assemby met, and it is hereby enacted by the authority of the same*, That the time for the commencement and completion of the Railroad, Plank Road and branches, authorized by the said recited Act, and the amendment therto, approved February 21st, 1850, be extended to ten years from and after the passage of this Act, and that the said Charter of Incorporation shall continue thirty years from and after the completion of said road and branches.

Transfer of Charter from the Georgia and Florida Railroad to "provisional" direction of South Georgia & Florida Railroad to build road from Albany to Florida line, confirmed by Legislature by following Act:

AN ACT to incorporate the South Georgia and Florida Railroad Company.

WHEREAS, by an agreement entered into between the Directors of the Georgia and Florida Railroad Company and the parties resident in Thomas county, named in the charter, the said parties in Thomas county were to have the control of the charter of said company for all of said line of road South of Albany, and Legislative provision was to be obtained therefor,

and under said agreement a Provisional Board of Directors has been elected for said road, South of Albany.

11. SEC. I. *Be it enacted*, That from and after the passage of this Act, Thomas B. Winn, D. S. Brandon, James L. Seward, A. H. Hansell, Wm. McClendon, P. E. Love, James H. Hayes, and their associates, successors and assigns, be, and they are hereby declared and constituted a body corporate and politic by the name and style of the South Georgia and Florida Railrord Company, and by that name may sue and be sued, plead and be impleaded, in any Court of Law or Equity in this State, may have and use a common seal, and the same alter or destroy, at pleasure, and may purchase, accept, have, hold, enjoy and convey any property, real personal, or mixed, which may be necessary or proper for the purposes herein mentioned.

12. SEC. II. *Be it further enacted by the authority of the same*, That said company shall have power and authority to survey, lay out and construct, equip, use and enjoy a railroad from Albany, in the county of Dougherty, or any point in its vicinity, on either side of Flint river to Thomasville, in the county of Thomas, and from Thomasville to any point on the Florida line, and to connect with any other road at such points as they may deem best.

13. SEC. III. *Be it further enacted by the authority aforesaid*, That the capital stock of said company shall be not less than fifty thousand, or more than one million of dollars; books of subscription for which shall be opened at such times and places as a majority of the parties named, their successors or assigns, shall determine.

14. SEC. IV *Be it further enacted by the authority aforesaid*, That the provisions of the Act incorporating the Georgia and Florida Railroad Company, so far as applicable, shall be applied to said South Georgia and Florida Railroad Company.

15. SEC. F. *Be it further enacted*, That the road contemplated in this Act, shall be commenced within five years from the passage of this Act, or this charter be forfeited.

16. SEC. VI. (Repeals conflicting laws.)

Assented to December 22d, 1857.

Power of Georgia and Florida Railroad to "incorporate" its stock with that of another railroad exercised and confirmed by Legislature. The part running from Albany to Americus (*i. e.*, the whole road), the South Georgia and Florida Railroad having been cut off,) consolidated with S. W. R. R., the charter of which last road was amended for that purpose by following Act:

AN ACT to amend the Charter of the South-western Railroad Company, and to authorize an increase of the capital stock of said Company, and for other purposes.

WHEREAS, in and by an act of the General Assembly, approved the 22d of January, 1852, entitled an act to incorporate the Georgia and Florida Railroad Company, and to confer certain powers and privileges therein mentioned, it was enacted as follows, to-wit:

"SEC. II. That the Georgia and Florida Railroad Company may at any time incorporate their stock with the stock of any other Company, on such terms as may be mutually agreed upon by such Companies; *Provided*, that the road and other property of this Company shall be subject to such taxation as the Legislature may deem equitable and just;" and whereas the said Georgia and Florida Railroad Company did agree with the said

South-western Railroad Company, to incorporate their stock with the stock of the said South-western Railroad Company, and did thereupon deliver their Railroad, running from Americus to Albany, to the South-western Railroad Company, and received stock of the South-western Railroad Company therefor to the amount of near five hundred thousand dollars, and thereby it became necessary to increase the capital stock of the said South-western Railroad Company.

100. SEC. I. *Be it therefore enacted*, That the President and Directors of the said South-western Railroad Company, be, and they are hereby authorized to increase the capital stock of said Company, and to issue stock in addition to the amount mentioned in their Charter, for any sum not exceeding $500,000.

101. SEC. II. *Be it further enacted*, That the said Railroad from Americus to Albany, shall be considered part and parcel of the road of the South-western Railroad Company, and be liable to pay to the State the same tax that the rest of the South-western Railroad Company is liable to pay, and such additional tax as the Legislature may hereafter impose.

South Georgia and Florida Railroad Charter continued for ten years by following Act of 1862:

AN ACT to extend and continue an Act to incorporate the South Georgia and Florida Railroad Company.

1. SECTION I. *Be it enacted by the General Assembly*, That said Act be, and the same is hereby extended and shall continue in force for the term of ten years after the passage of this Act, and that all the rights, privileges, immunities and corporate privileges conferred by said Act to incorporate the South Georgia and Florida Railroad Company, assented to December 22d, 1857, be and the same are continued and kept in force for the term aforesaid.

SEC. II. Repeals conflicting laws.

Assented to December 13th, 1862.

(Under Act of 1857 the Charter would have expired December 22d, 1862.)

State aid granted to South Georgia and Florida Railroad by following Act:

AN ACT to loan the credit of the State to the South Georgia and Florida Railroad Company, and for other purposes.

WHEREAS, The South Georgia and Florida Railroad, a road chartered by the Legislature of the State of Georgia, to be built from the city of Albany to the city of Thomasville, in this State, is a work of great general as well as local value and importance to a large portion of the good people of this State: *And whereas*, the building of said South Georgia and Florida Railroad will be of incalculable benefit to the State of Georgia, by developing the resources of a large and valuable portion of the State hitherto unprovided with railroad advantages.

10. SECTION I. *Be it enacted, etc.*, That from and after the passage of this act, whenever the South Georgia and Florida Railroad Company shall have completed and fully equipped ten continuous miles of road, at either or both ends of its line, it shall be the duty of the Governor of the State, and he is hereby required, for and in behalf of the State, to endorse the guaranty of the State, on the first mortgage bonds of said railroad com-

pany, to the extent of eight thousand dollars ($8,000) per mile, for that portion thus finished, completed and equipped, and when the second section of ten miles is completed and equipped it shall be the duty of the Governor, and he is hereby required to endorse the like guaranty on the said first mortgage bonds of said railroad company, upon the presentation of said bonds by said company, to the extent of eight thousand dollars ($8,000) per mile, for the second section of ten miles; and this rate and extent of endorsement shall be continued, upon the same conditions, for each subsequent section of ten miles until said railroad is completed, it being the true intent and meaning of this act that the State shall endorse the first mortgage bonds of said railroad company to the extent of eight thousand dollars per mile for each mile of said company's line, whenever said railroad company shall prepare and execute said first mortgage bonds, and shall make request for such endorsements of guaranty thereof as aforesaid.

11. SEC. II. *Be it further enacted*, That if the last section of said railroad shall be less than ten miles, the endorsement shall be at the said rate of eight thousand dollars per mile.

SEC. III. *Be it further enacted*, That before any such endorsement shall be made, the Governor shall be satisfied that so much of the road as the said endorsement shall be applied for is really finished and in complete running order, and that said road is free from all mortgages or other legal incumbrances, which may in any manner endanger the security of the State, and upon the further conditions and express understanding that any endorsement of said bonds, as aforesaid, when made, shall not only subject all property of every kind, which may be purchased with said bonds, to the obligation of said first mortgage lien, until all the principal and interest due on the bonds so endorsed shall be paid, but the said endorsement shall be, and is hereby, understood to operate as a prior lien or mortgage on all the property of the company, to be enforced as hereinafter provided for.

12. SEC. IV. *Be it further enacted*, That in the event any bond or bonds endorsed by the State, as provided in the first section of this act, or the interest that may accrue and become due thereon, shall not be paid by said railroad company at maturity, or when due it shall be the duty of the Governor, upon information of such default, by any holder of said bond, or bonds, to sieze and take possession of all the property of said railroad company, and apply the earnings of said road to the extinguishment of said unpaid bond, or bonds, or coupons, and may, at his discretion, upon continued default in such payment, by said company, for a period of six months, sell the said road and its equipments, and other property belonging to said company, or any portion thereof, in such manner, and at such time, as, in his judgment, may best subserve the interest of all concerned.

13. SEC. V. *And be it further enacted*, That no railroad company in this State, shall, under any pretext, sell or dispose of any bonds, issued to it by the State, or any of its own bonds, endorsed by the State, at less than ninety cents (90c.) in the dollar in lawful money of the United States; and in case any such company, to which the State has or may extend its aid, has or may, by any direct contract; or by any evasion or pretext, sell or dispose of, or attempt to sell or dispose of, any bonds issued or endorsed by the State, as aforesaid, for less than ninety (90c.) in the dollar, it shall be the duty of his Excellency, the Governor, to withhold all further issue of bonds to such company, and all further endorsement of the bonds of such company, and any citizen or tax payer in this State may appeal to the courts in his own name, to restrain such illegal use of the bonds so

issued, or endorsed, to said company, and to discover the fraudulent or illegal use made of such bonds, by reason of which the credit of the State may be depreciated, and the burden of the citizen increased, and said endorsement shall in no case exceed the amount per mile already invested by stockholders or private persons, and actually paid in by such stockholders.

SEC. VI. Repeals conflicting laws.

Approved September 26, 1868.

Foregoing act amended, stating termini of road correctly, which first aid act did not do, and authorizing endorsement for $12,000 per mile by following act:

AN ACT to amend an act entitled an act to loan the credit of the State to the South Georgia and Florida Railroad company; to fix the location and termini of said road; to extend the aid of the State to the further completion of said road, and for other purposes, assented to September 26, 1868.

WHEREAS, a part of the preamble to the aforesaid act is set forth in the following words: whereas the South Georgia & Florida Railroad, a road chartered by the Legislature of the State of Georgia, to be built from the city of Albany to the city of Thomasville, in this State, is a work of great general, as well as local value, and important to a large portion of the good people of the State; and whereas, the same does not correctly state the location of the termini of the South Georgia and Florida Railroad.

SEC. 1. *Be it therefore enacted*, That said part of said preamble be so amended as to read as follows: whereas, the South Georgia & Florida Railroad, a road chartered by the Legislature of the State of Georgia, to be built from the city of Albany, by way of the city of Thomasville, to the Florida line, is of great general as well as local value and importance to a large portion of the good people of this State.

SEC. 2. *And be it further enacted*, That when any additional ten miles have been graded and in running order the endorsement of the State shall be placed upon the bonds of the said company, at the rate of twelve thousand dollars per mile: *Provided*, That nothing in this act contained shall be construed to extend the aid of the State to any part of the said road already built.

SEC. 3. *And be it further enacted*, That all the provisions of said act shall apply to the South Georgia and Florida Railroad as defined by its charter.

SEC. 4. *And be it further enacted*, That all laws militating against this act are hereby repealed.

Approved October 17, 1870.

Name of Savannah and Albany Railroad changed to Savannah, Albany and Gulf Railroad by act of 1853.

Acts of 1853-4, p. 454, not important, except as showing change of name.

Atlantic and Gulf Railroad incorporated with all the privileges of Central and Georgia Railroads, by act of February 27, 1856.

The first three sections of the act give names of corporators, mode of opening books of subscription, election of Directors.

The fourth section reads as follows:

4. SEC. IV. *Be it further enacted*, That when the Atlantic and Gulf Railroad Company shall be organized as provided in the previous sections of this act, the said company shall be authorized and is hereby declared to have full power to build, construct, and maintain a railroad for the transportation of produce, merchandise and passengers, from a point as near as practicable to the intersection of the lines of the counties of Appling, Ware and Wayne, crossing the Satilla river at or near Walker's ferry in the vicinity of Waresboro, and thence by the most practicable route to the Western boundary of the State of Georgia, at any point between Fort Gaines, in the County of Clay, and the junction of the Flint and Chattahoochee rivers, in the county of Decatur; said Western terminus to be selected by the Directors, after an accurate survey and estimates of cost shall have been made, and with a distinct reference to a speedy connection with the Gulf of Mexico at Mobile or Pensacola, all questions growing out of the right of way, and damages therefor, to be decided according to the provisions of the fifteenth section of the amended charter of the Central Railroad and Banking Company of Georgia, approved the fourteenth day of December, eighteen hundred and thirty-five, which section is declared to be a part of this act, and all the privileges, immunities and exemptions granted to the Central Railroad and Banking Company, and the Georgia Railroad and Banking Company, or either of them, by the acts incorporating said companies, and the several acts amendatory thereof, are hereby granted to the said Atlantic and Gulf Railroad Company, so far as the same can be made applicable to said Atlantic and Gulf Railroad Company.

And the sixth section as follows:

6. SEC. VI. *Be it further enacted*, That the Savannah, Albany and Gulf Railroad Company, and the Brunswick and Florida Railroad Company, and either of them, shall be permitted to join their tracks with the track of the said Atlantic and Gulf Railroad Company with equal privileges to both of said companies, and without any discrimination whatever against either of them, it being the intention of the State of Georgia by this act to provide a main trunk railway across her territory, connecting the Atlantic with the Gulf of Mexico, that any railroad in this State shall have the privilege and right to join said Atlantic and Gulf Railroad Company without any discrimination for or against such railroad joining thereto; *Provided*, that the stockholders thereof build said road with their own money.

9. SEC. IX. Repeals conflicting laws.

All the other sections are immaterial.

Act of February 27, 1856, amended by act of December 1, 1857, authorizing release by Sav., A. & G. R. R. of "their right of way for their main line" to A. & G. R. R., as follows:

AN ACT to explain an Act entitled an Act to incorporate a Railroad Company to be called the Atlantic and Gulf Railroad Company, and for other purposes therein named, approved February 27th, 1856, and for other purposes.

WHEREAS, the Legislature of 1855 and 1856, granted a charter incorporating a certain railroad company under the name and style of the Atlantic and Gulf Railroad Company, authorizing the Governor of this State

to subscribe for stock in said railroad company, when certain conditions had been complied with, specified in said charter; and whereas the fifth section of said charter contained the following proviso, viz: "But no payment shall be made on the part of the State, until the Savannah, Albany and Gulf Railroad Company, and the Brunswick and Florida Railroad Company shall have released any right which either of said companies have or claim to interfere with the location of said road on account of any privileges granted in the charters of either of them;" and, whereas doubts have arisen as to what construction may be put on the said words requiring said relinquishments:

8. SECTION I. *Be it therefore enacted*, That whenever the companies aforesaid shall have made relinquishments to the said Atlantic and Gulf Railroad Company in the following words, to-wit: The Savannah, Albany and Gulf Railroad Company, or the Brunswick and Florida Railroad Company, as the case may be, do hereby release to the Atlantic & Gulf Railroad Co. the right of way for their main line over the territory covered by its charter, from a point at or near the initial point of said Atlantic and Gulf Railroad Company to the Western boundary of the State of Georgia, the said Brunswick and Florida Railroad Company reserving to itself all other rights and privileges granted by its charter, except the right of way aforesaid and a right of franchise of three hundred (300) feet on either side of said line, then and in that case the Governor, for the time being, shall be authorized to pay over to the said company the subscription on the part of the State, according to the other provisions and requisitions of said charter.

* * * * *

10. SEC. III. Repeals conflicting laws.

Approved December 1st, 1857.

Charter of A. & G. R. R., amended by Act of December 19th, 1859, (showing purpose of incorporation was to reach Mobile), as follows :

AN ACT to alter and amend the charter of the Atlantic and Gulf Railroad Company, and to locate the West end of the same.

1. SEC. I. *Be it enacted*, That the Atlantic and Gulf Railroad Company shall have a survey of the most practicable line of Road continued from Bainbridge, to a point on the Western boundary of the State of Georgia, at or near Columbia, in the State of Alabama, or where the survey of the Albany and Gulf Railroad line from Mobile approaches the Chattahoochee river, and said point shall be the terminus of said road.

SEC. II. Repeals conflicting laws.

Approved December 19th, 1859.

A. & G. R. R. and S., A. & G. R. R. consolidated by Act of April 18, 1863, as follows :

AN ACT to authorize the consolidation of the stocks of the Savannah, Albany and Gulf Railroad Company, and the Atlantic and Gulf Railroad Company, and for other purposes.

17. SECTION I. *Be it enacted by the Senate and House of Representatives of the State of Georgia*, That the Savannah, Albany and Gulf R. R. Company, and the Atlantic and Gulf R. R. Company, be, and they are hereby authorized and empowered to consolidate their stocks upon such terms and conditions as may be agreed upon by the Directors of said R. R. Companies and ratified by a majority of the stockholders thereof ; and the said R. R. Companies, when so consolidated, shall be known as 'The Atlantic and Gulf

Railroad Company'; *Provided*, That nothing herein contained shall relieve or discharge either of said companies from any contract heretofore entered into by either, but this Company shall be liable on the same.

18. SEC. II. *Be it further enacted by the authority aforesaid*, That the stockholders of said consolidated Railroad *Companies*, by such corporate name and in such corporate capacity, are made capable in law to have, purchase and enjoy such real and personal estate, goods and effects as may be necessary and proper to carry out the objects herein specified, and to secure the full enjoyment of all the rights herein and hereby granted; and by said name to sue and be sued, plead and be impleaded in any Court of competent jurisdiction, to have and use a common seal, and the same to alter at pleasure, and to make, ordain and establish such rules, by-laws and regulations as shall seem necessary and convenient for the government and protection of said corporation, the same not being contrary to the laws or Constitution of this State, and generally to do and perform and execute all such acts, matters and things, as may appertain to corporations of like character.

19. SEC. III. *And be it further enacted by the authority aforesaid*, That the several immunities, franchises and privileges granted to the said Savannah, Albany and Gulf Railroad Company, and the Atlantic and Gulf Railroad Company, by their original charters and the amendments thereof, and the liabilities therein imposed, shall continue in force, except so far as they may be inconsistent with this Act of consolidation.

20. SEC. IV. *And be it further enacted by the authority aforesaid*, That nothing in this Act shall be so construed as to impair the covenants and obligations of the Atlantic and Gulf Railroad Company with and to the State of Georgia; and that so long as the State of Georgia shall continue to be a stockholder in said consolidated roads, that the seventh and eighth sections of the charter granted to the said Atlantic and Gulf Railroad Company, on the twenty-seventh day of February, in the year one thousand eight hundred and fifty-six, shall continue in force, and that the sixth section of such charter shall remain in force permanently; *Provided*, that nothing in this Act shall be so construed as to affect or impair any right or rights which connecting railroads had or were entitled to under the charter of the Atlantic and Gulf Railroad Company.

SEC. V. Repeals conflicting laws.

Assented to April 18th, 1863.

Neither the charter of the Ga. R. R. nor its amendments up to 1856, confer power to issue preferred stock or to purchase connecting roads.

Neither the Central R. R. nor the Ga. R. R. have power to issue guaranteed scrip, nor to make any scrip payable to bearer.

The XVth section of the charter of the Central R. R., (see Prince's Digest, ed. 1837, p. 302), reads thus:

24. SEC. XV. Certificates of stock shall be issued to the stockholders on the payment of the sum required at the time of subscription, which shall be transferable on the books of the company only, and by personal entry of the stockholder or his legal attorney or representative only authorized for that purpose.

The XVIIIth section of the Ga. R. R. charter, (see Prince's Digest, ed. 1837, p. 308), reads thus:

SEC. XVIII. * * It shall be the duty of the company, as soon as may be, after they are organized, or of the board of directors, to issue scrip to

each subscriber for the shares he holds, and deliver the same at the time of the second payment ; on which, if convenient and practicable, receipts for the instalments paid and that may successively be paid, may be endorsed, and the scrip issued may be assignable and transferable, in person or by attorney, at the office and on the books of the company ; and the said corporation shall and may, in and by their by-laws, rules and regulations, prescribe the mode of issuing the evidences of shares of stock and the terms and conditions, as also the times and manner in which shares in the company may be transferred.

C. R. R. authorized to issue "new extension stock," for extension to Columbus, and when completed all stock to be consolidated, with "no distinction between shareholders."

Acts of 1845, p. 164, §6 & 7 read thus :

Sec. 6. *And be it further enacted by the authority aforesaid*, That so soon as the said extended Rail Road is completed to the Chattahoochee river, and fully equipped, the said company shall unite the said new extension stock with the existing stock, and such other stock as the said Company may issue to shareholders in the Road from Savannah to Macon, by way of remuneration for profits of its road expended in its completion and equipment, such other stock not to exceed five hundred thousand dollars. *Provided*, That in the union of the different stocks, the road from Savannah to Macon, and its equipments, shall not be taken or valued for more than two million six hundred thousand dollars.

Sec. 7. *And be it further enacted by the authority aforesaid*, That from and immediately after the uniting of the stocks, as contemplated in the preceding section, there shall be no distinction between the shareholders in the new and old stock, and the other stock authorized by the preceding section to be issued, but all shall be shareholders in the said Company and its property, with equal interest and liabilities, according to the number of shares they may respectively hold.

The C. R. R. authorized to lease connecting roads, by the following Act of January 22d, 1852 :

AN ACT to authorize the Central Railroad and Banking Company of Georgia to lease and work such railroads as now connect, or may hereafter connect, with the Central Railroad, and to authorize the Board of Directors of such Railroad Companies as now have, or may hereafter have, their respective Railroads connecting with the said Central Railroad, to make leases thereof for a term of years, or during the continuance of their respective charters.

Approved, January 22, 1852.

35. Sec. I. *Be it enacted by the Senate and House of Representatives of the State of Georgia in General Assembly met, and it is hereby enacted by the authority of the same*, That it shall and may be lawful for the Centrail Railroad and Banking Company of Georgia to lease and work for such time and on such terms as may be agreed on by the parties interested, the Augusta and Waynesboro' Railroad, the Milledgeville and Gordon Railroad, the Eatonton Branch Railroad, the South-Western Railroad, and such other Railroads as now connect, or may hereafter connect with the Central Railroad, and to collect, by suit or otherwise, the fares of travel and the charges of transportation on Railroads so leased.

36. Sec. II. *And be it further enacted by the authority aforesaid*, That the respective Boards of Directors of the incorporated Companies owning the

Railroads as now connect or may hereafter connect with the Central Railroad, shall have power and authority so to lease to the Central Railroad and Banking Company of Georgia their respective Railroads for such term of time and on such other terms as they may respectively deem best.

SEC. III. *And be it further enacted by the authority aforesaid,* That the locomotive engines, and other property, and the operatives of the said Central Railroad and Banking Company of Georgia, employed on such leased Railroads, shall have and enjoy the same protection as are granted to the property and operatives of the respective Companies hereby authorized to grant leases to the said Central Railroad and Banking Company of Georgia.

38. SEC. IV. *And be it further enacted by the authority aforesaid,* That all laws and parts of laws militating against this Act, be, and the same are hereby repealed.

The So. Ga. and Fla. R. R. was completed from Thomasville to East Albany, (which is separated from Albany by the Flint River), some time in 1870.

See Record, p. 57, "Extracts from Minutes of October 10, 1870."

The So. Ga. & Fla. R. R. Co's. charter was not acted on prior to the contract of June 19th, 1868, with the A. & G. R. R. Co.

(Record, p. 50.) (Ib., 5. 57.)

By Act of December 15th, 1862, (quoted elsewhere), the original Act of incorporation (which up to that date had remained dormant upon the statute books—nothing having been done towards the construction of the road), was continued, and kept in force for ten yers—i. e., until December 15, 1872. There has been no further extension of the charter, and hence the charter expired on December 13th, 1872.

In the Acts granting State aid to the S. G. & F. R. R., (Acts of 1868 and 1870), nothing is said as to when the bonds endorsed by the State are to be made payable. They are, in fact, made payable in 1890. This should appear in the Record, p. 60, but from fault of the printer, or of the Clerk of the Circuit, Court, it is omitted. The words "the year 1890 " should appear after the word "until" at the end of the 18th line, on p. 60 of the Record.

While the final deed transferring the S. G. & F. R. R. to the A. & G. R. R. Co., is dated January 8th, 1876, all the guaranteed scrip had issued long prior to that date, and interest on it had been regularly paid up to November 1st, 1874. Record, p. 58.

The following is the decision of the Circuit Court :

Petition of Branch Sons & Co., holders of preferred stock of the Atlantic and Gulf Railroad Company, given in payment of the South Georgia and Florida Railroad, praying for themselves and others in like case, who may come in, etc., to be first paid out of the separate proceeds of that road after satisfaction of the separate mortgages on the same.

The petition sets forth certain agreements for the purchase of the South Georgia and Florida Railroad by the Atlantic and Gulf Railroad Company, the first being June 19th, 1868 ; the second, June 15th, 1869 ; the third September 1st, 1869 ; the fourth and last being dated June 8th, 1876, and being a conveyance or deed of bargain and sale for the said railroad.

A copy of one of the stock certificates is appended to the petition and is in the regular form of a certificate of stock drawing interest ; it is headed $6,600, No. 250, 66 shares, Atlantic and Gulf Railroad of Georgia.

Special guarantees, seven per cent. stock, issued under a contract with the South Georgia and Florida Railroad Company, bearing date January 2d, 1869, for the construction of the South Georgia and Florida Railroad."

It certifies that Branch & Sons, or bearer, is entitled to 66 shares, on which the par value of one hundred dollars has been paid, of the special stock of the Atlantic and Gulf Railroad Company, on which interest from date is perpetually guaranteed at the rate of seven per cent. per annum, payable, semi-annually, at the office of the Company, in Savannah, on the first days of May and November in each year.

This scrip to be renewed with other like scrip when the blanks for interest on the back are filled. Witness, etc., signature of President and seal of company, and dated November 1, 1872, with indorsements of interest paid to November 1st, 1874.

A similar petition was filed by W. B. Bennett. An amendment was afterwards allowed to be made to the original petition, joining the South Georgia Railroad Company therein, and alleging that the contract was *ultra vires* and void, and against public policy, and that neither company, under its charter, had any power to make such a contract. That, at most, it was but a lease of the road, and should be rescinded for non-compliance with its terms. But if held a valid conveyance, still the petitioners, being *bona fide* holders of the scrip, and some of them original holders, should have the relief prayed in the original petition.

The question whether the two companies had the power to make the contract which they did, depends on the condition of their respective charters at the time.

The Atlantic and Gulf Railroad Company was constituted by the consolidation of two companies in 1863, under an Act of the Legislature passed April 18th, 1863. These were the Savannah, Albany and Gulf Railroad Company, chartered December 25th, 1847, and the Atlantic and Gulf Railroad Company, chartered 27th February, 1856. The consolidated Company took all the immunities, franchizes and privileges granted to both Companies by their original charters.

The original charter of the Savannah, Albany and Gulf Railroad Company invested it with "all the rights, privileges and immunities which by the laws of Georgia were held and enjoyed by any other incorporated railroad company or companies."

The original charter of the Atlantic and Gulf Railroad Company conferred upon it "all the privileges, immunities and exemptions granted to the Central Railroad and Banking Company, and the Georgia Railroad and Banking Company, or either of them, by the Acts incorporating said Companies, and the several Acts amendatory thereof."

From these provisions it results that the consolidated company had all the rights and powers granted to any other company whatever, prior to December 25, 1847, and all such as had been granted either to the Central or the Georgia Railroad Companies prior to February 27, 1856. It is not shown that any powers, germain to the subject under discussion, can be found in the charters referred to, going further than: "To have, purchase, possess, enjoy and retain lands, rents, hereditaments, tenements, goods, chattels and effects of whatsoever kind, nature or quality the same may be, and the same to sell, grant, demise, alien or dispose of."

This enumeration of powers is sufficient to enable the companies to purchase a railroad if not precluded from doing so by the confined objects and purposes of its charter; but would not be sufficient, without the aid of other legislation, to enable it to purchase and possess a line of road outside of the limits prescribed to it. An inspection of the charter of the

Savannah, Albany and Gulf Railroad Company, however, shows that the road, purchased in the present case, was not without, but precisely within, the limits of that charter. The charter gave the right to construct a railroad communication between the city of Savannah, and the city of Albany, with such continuations and branches as might be requisite. Now, since it had the power to purchase, there is no reason why it should construct a new road the entire distance, if it found one to its hand for a portion of the route which it could purchase. The South Georgia and Florida Railroad Company had just such a road, or charter for a road between Thomasville and Albany as the Savannah, Albany and Gulf Railroad Company, and the consolidated company entitled to its franchises required, and they purchased it.

We do not see how this purchase can be regarded as *ultra vires* of the consolidated Atlantic and Gulf Railroad Company.

Next, as to the powers of the South Georgia and Florida Railroad Company to sell. This company was authorized by its charter, dated December 22, 1857, amongst other things, to construct a railroad from Albany to Thomasville, and from thence to the Florida line, about ten miles beyond Thomasville; and the company was invested with all the powers and privileges granted to the Georgia and Florida Railroad Company, of which it was an offshoot. The latter company, by its charter, dated January 22d, 1852, had all the powers of the Savannah and Albany Railroad Company given to it by its original charter and amendments, not inconsistent with the rights and privileges of that company. It was further endowed with power, at any time, to incorporate its stock with the stock of any other company on such terms as might be mutually agreed upon. Now we have seen that the Savannah and Albany Company had all the power granted to any other railroad company in the State; and that the powers of the Georgia and Central Companies, which were incorporated in 1833, extended to the purchase and sale of any kind of property whatever. The South Georgia and Florida Railroad Company, therefore, not only had the power to purchase and sell, but the still higher power of consolidating with any other company.

In view of these large grants of power, and in view of the maxim that the greater includes the less, we can have no doubt that the Atlantic and Gulf Railroad Company, and the South Georgia and Florida Railroad Company, had full powers to make the contract which is brought into question, and that the sale of the line of the latter between Thomasville and Albany was a valid sale. It included all the franchises necessary to run and operate the road.

This view of the case disposes of all those objections which are founded upon the supposed illegality of the contract as being *ultra vires* of the parties to it.

We are further of opinion that, inasmuch as the line thus purchased by the Atlantic and Gulf Railroad Company was within its chartered limits, and came in place of a road which it might have constructed itself, under its own charter, that it is covered by both the first and second mortgages of that company; but, of course, not to the prejudice of the priorities due to the separate mortgages on that branch of the road.

This conclusion renders it unnecessary to consider the position of the petitioners in which they are placed by their own conduct in taking the preferred stock referred to, receiving interest thereon for long years, and generally acquiescing in the whole transaction. We think that they are entirely without equity, and the prayer of the petitioners is denied.

We may add, in this connection, that we have no doubt of the power

of the Atlantic and Gulf Railroad Company to mortgage its road and the franchise therewith connected, and necessary to run and operate the same, not including the franchise of being a corporation. If it had the power to sell, it had the power to mortgage, which is the lesser power and included therein. This is an old doctrine, and has been confirmed by the decision of the Supreme Court of Georgia. Wayne vs. Middleton' 2 Kelly, 283–404.

No express power to borrow money was necessary, for that is implied in the creation of all business corporations, although in fact express power was given to the Central Railroad Company in December, 1845, to borrow money on its bonds, and this power, by the terms of its charter, was, therefore, conferred upon the Savannah, Albany and Gulf Railroad Company, and, hence, upon the consolidated Atlantic and Gulf Railroad Company.

We think the mortgages are valid, and a lien upon the entire road of the company, including the portion lying between Thomasville and Albany; and that a decree should be made for the foreclosure and sale of the road, its equipments, and franchises, for the purposes of raising the amount due on the mortgage bonds, as prayed in the bill of complaint.

A point, however, has been raised, which ought to be noticed here, that the first mortgage was not acknowledged or proved before the proper magistrate. The execution appears to have been made with all due solemnities and in the proper form : but the acknowldgement was made before and certified by a Justice of the Supreme Court of the State of New York. It is contended that this is not in compliance with the laws of Georgia, to authorize the recording of an instrument in the proper offices. It is admitted that it is sufficient in the case of a deed ; but that a mortgage, if executed out of the State, should be acknowledged before a Consul or a Commissioner of the State of Georgia. This objection is extremely technical ; but, if valid, we must decide that the registry of the document is not, of itself, notice to the parties subsequently dealing with the property. We think, however, that the objection cannot prevail. The instrument in question is not a mortgage in form, but a deed of trust ; and without inquiring whether even a mortgage is not itself a deed so as to be governed by the provisions relating to deeds, we think that this document is technically a deed ; and that its execution and acknowledgement in such manner and form as are required in the case of deeds, is sufficient. The objection, therefore, cannot prevail.

SUPREME COURT OF THE UNITED STATES.

MORRIS K. JESUP, Surviving Trustee,
vs.
THE ATLANTIC & GULF RAILROAD COMPANY, and BRANCH, SONS & CO., *et. al.*, Intervenors.

ASSIGNMENT OF ERROR.

Afterwards, to-wit, on the second Monday of October, in this same term, before the Justices of the Supreme Court of the United States, at the capital, in the city of Washington, come the said intervenors by Chas. N. West and W. W. Montgomery, their solicitors, and say that in the record and proceedings aforesaid there is manifest error in this, to-wit:

1st. In that the Circuit Court held that the Atlantic & Gulf Railroad Company, as successor to the franchises of the Savannah, Albany and Gulf Railroad Company, had the power to purchase a railway running from a point on the line of the Atlantic and Gulf Railroad to Albany.

2d. In that the Circuit Court held that the Atlantic and Gulf Railroad Company had the power to make the purchase of that part of the South Georgia and Florida Railroad running from Thomasville to Albany, under that clause of its charter which conferred upon it "all the privileges and immunities and exemptions granted to the Central Railroad and Banking Company, and the Georgia Railroad and Banking Company, or either of them, by the acts incorporating said companies, and the several acts amendatory thereof."

3rd. In that the Circuit Court held that the South Georgia and Florida Railroad Company had the power to sell part of its road under that clause of its charter which conferred upon it all the powers of the Savannah and Albany railroad Company—and again under its own chartered power to incorporate its stock with the stock of any other company on such terms as might be mutually agreed upon.

And the said intervenors pray that so much of said decree as decides adversely to their interests may be reversed, annulled and altogether held for naught, and that they may be restored to all things which they have lost by occasion of the said decree.

CHARLES N. WEST,
W. W. MONTGOMERY,
Solicitors for Intervenors.

3d. Because the Court erred in not deciding in favor of intervenors the issue made by the pleadings as to whether said intervenors were vendors of the South Georgia and Florida Railroad to the Atlantic and Gulf Railroad Co., and entitled to priority of payment of the purchase money over other claims, out of the proceeds of the sale of the S. G. & F. R. R., and in not ordering that road sold separately and application of the proceeds made to the payment of the claims of the intervenors.

4th. Because the Court erred in holding that the property of the A.

& G. R. R. Co. consisted among other things of the road running from Thomasville to Albany, "formerly known as the S. G. & F. R. R.," and of the "depot grounds of said company in Albany," and in further holding all of said property constituted the A. & G. R. R.

5th. Because the Court erred in holding that the mortgage to Morris K. Jesup and John Gardner, Trustess, covered the South Georgia and Florida Railroad.

6th. In holding that the mortgage to Eugene Kelly and Samuel A. Strong, Trustees, covered said S. G. & F. R. R.

And the said intervenors pray that so much of said decree as decides adversely to their interests may be reversed, etc., as hereinbefore prayed.

CHARLES. N. WEST,
W. W. MONTGOMERY,
Solicitors for Intervenors

The questions involved under the foregoing facts and charters are:

1st. Was the sale of a part of the S. G. & F. R. R. and its franchises to the A. & G. R. R. void as against public policy and *ultra vires?*

2d. If not, did the contract amount to anything more than a lease?

3rd. If it was a sale are not the S. G. & F. R. R. Co. and other intervenors vendors with the purchase money unpaid and hence entitled to assert their right of attachment upon the property sold, in preference to the claims of the mortgage creditors of the vendee, the A. & G. R. R. Co.?

4th. If the intervenors are not entitled to attach as vendors, are they not *creditors* of the A. & G. R. R. Co. and entitled to be paid ont of property of the debtor which is not covered by the mortgage; and in this case does the mortgage cover the S. G. & F. R. R.?

If only stockholders can they not object to the sale of the S. G. & F. R. R. under the present proceedings?

1st. Was the sale of the S. G. & F. R. R. void?

The Georgia & Florida Railroad was incorporated January 22d, 1852, (Acts of 1851-2, p. 151, given in full *supra*) The charter invests the company "with the same powers and prileges which have been granted to the Savannah & Albany Railroad Company by its original charter and acts amendatory thereof."

The charter further authorizes the G. & F. R. R. to "incorporate its stock with the stock of any other company upon such terms as may be agreed on by such companies."

The only parts of the charter of the S. & A. R. R. adopted as part of the charter of the G. & F. R. R. must be found in the act of December 25th, 1847, and in that of November 20, 1851, cited *supra.*

In neither is there any express power to sell or incorporate its stock with that of another company. But the Circuit Court deduces the power to sell a part of its road and franchises from the above Act of December 25, 1847, which confers upon the S. & A. Co. "all the rights, privileges and immunities which by the laws of Georgia were held and enjoyed by any other incorporated railroad company or companies."

And as the Central and Georgia Railroads had prior to that time the power "to have, purchase, possess, enjoy and retain lands, rents, hereditaments, tenements, goods, chattels and effects of whatsoever kind, nature or quality the same may be, and the same to sell, grant and demise, alien or dispose of;" therefore the Circuit Court held the S. & A. R. R. had the same powers, and by consequence the G. & F. R. R. had them also, and from that road the S. G. & F. R. R. derived them.

The premises admitted the conclusion of the Circuit Court logically follows :

But are the premises correct? The Supreme Court of Georgia, as will presently be shown, say not. Whether the Circuit Court be correct in attributing under the language quoted such very broad powers to the Central and Georgia Railroads as the right to dispose of a part of their railroads *and their chartered powers to run that part,* it is not necessary to determine.

It will be noted that no greater power is given to sell than to buy.—The Supreme Court of Georgia have had this language under their consideration where the Central Railroad attempted to buy stock in another company, and have held such power was not conferred by the language relied on.

Central Railroad vs. Collins, 40 Ga., 582.

This Court will follow the ruling of the Supreme Court of Georgia whatever may be its own view as to the proper construction to be placed on the charters.

If the Central Railroad had no power to buy stock in another corporation, under the power conferred, can this Court hold that the A. & G. R. R. had the right to buy a part of a road and the necessary franchises to operate it under the same power?

Where a whole road is authorized to be sold, a part cannot be.

Upson Co. R. R. vs. Sharman, 37 Ga., 644.

It will be observed that the A. & G. R. R. have no corporate power to issue guaranteed stock, nor to absorb other roads by amalgamating their stock with such other road.

Charters must be constued strictly.

Code of 1873, Section 2362 reads thus:

§2362. (2331.) *Nothing taken by implication.* A grantee of lands or a franchise, takes nothing by implication, but is confined to the terms of his charter; but every presumption is in favor of a grant.

Central Railroad vs. Collins, 40 Ga., 619, par. 2.

The object of the Legislature in granting the charter must be kept in view.

Central Railroad vs. Collins, 40 Ga., 621.

Where two separate corporations were created to make railroads they have no right to unite and conduct their business under one management.

21 Howard, 442.

As a further reason why the contract of January 8, 1876, between the roads is void, it is submitted, that in as much as the charter of the S. G. & F. R. R. expired in in 1872, it was no longer in the power of the Directors to consummate, by the contract of 1876, whereby the road was granted to the A. & G. R. R., the prior agreements. If those agreements were valid, still the corporation was dissolved by expiration of its charter. The Georgia Code of 1873, §1684, reads :

§1684. (1683.) *How dissolved.* Every corporation is dissolved--1st by expiration of its charter ; 2d, by forfeiture of its charter ; 3d, by a surrender of its franchises ; 4th, by the death of all its members without provision for a succession.

If the agreements made prior to the expiration of the charter were

enforceble at all, they could only be enforced under Code, §1688 and §1689, reading thus :

§1688. (1687.) *Disposition of assets.* Upon the dissolution of a corporation, for any cause, all of the property and assets of every description belonging to the corporation shall constitute a fund—first, for the payment of its debts, and then for equal distribution among its members. To this end the Superior Court of the county where such corporation was located shall have power to appoint a receiver, under proper restrictions, properly to administer such assets under its direction.

§1689. (1688.) *Collateral liability.* The dissolution of a corporation, from any cause, shall not, in any manner, affect any collateral or ultimate or other liability, legally incurred by any of its officers or members.

There has been no acquiescence by the holders of the guaranteed scrip in the contract of January 8th, 1876. They were not called on to acquiesce ; indeed were not known, the scrip being payable to bearer, and had a right to suppose that on the expiration of the charter the course pointed out by the Code would be pursued, and no acquiescence can be presumed from receipt of the interest, for none has been pain since November 1st, 1874.

If it be said that a Court of Equity would compel specified performance of the contracts entered into prior to the expiration of the charter. The reply is the bill must, in such an attempt, be brought against the stockholders, and they could, by a cross bill, ask, as they do by their intervention, that the contract be rescinded, and an accounting be had between themselves and the A. & G. R. R. Co., they accounting for the interest received by them ; the A. & G. R. R. Co. accounting for the profits of the S. G. & F. R. R.

It is no objection to the rescission to say that the endorsement of the second mortgage bonds of the S. G. & F. R. R., by the A. & G. R. R., could not be rescinded. The latter had no power, under their charter, to make the endorsement, and it is void. It will not be pretended that the charter of the A. & G. R. R., anywhere, authorizes that road to endorse the bonds of another corporation.

Supervisors vs. Schenck, 5 Wallace, 784.

Even a *bona fide* holder of bonds of a corporation is bound to look for Legislative authority to issue them.

Com'rs., &c. vs. Bolles, 94, U. S. R., 104 ; Cromwell vs. Co. of Sac., 96, U. S. R., 51, [2.]

But, if we cannot rescind, still we say that the contract for the transfer of the road, entered into by the agreements of June, 1868, and January and September, 1869, can only be enforced in a Court of Equity, as stated, and the mortgogees, seeking its enforcement, in order that the mortgage may cover the S. G. & F. R. R., at the hands of a Court of equity, must do equity. Their mortgage cannot cover that road until it is "acquired" by the A. & G R. R., i. e., until title vests in the A. & G. R. R. To vest that title requires the application to equity, and there a superior equity meets the mortgagees, to-wit : The right of the vendors to the payment of their purchase money, for which the law of Georgia gives them a lien superior to all others. The Act reads thus :

AN ACT to amend the Attachment Laws of the State of Georgia, and to authorize the issuing of attachments where purchasers are in possession of property for which they have not paid.

6. SECTION I. *Be it enacted by the Senate and House of Representatives*

of the State of Georgia in General Assembly convened, That process of attachment may issue in behalf of any creditor whose debt is created by the purchase of property, upon such debt becoming due, when the debtor who created such debt is in the possession nf the property, for the purchase of which the debt was created.

7. SEC. II. That before process of attachment shall issue under this Act, the party seeking the attachment, his agent or attorney at law, shall make affidavit before some person authorized by law to issue attachments, that the debtor has placed himself in the position mentioned in the first section of this Act ; and, also the amount of the debt claimed to be due ; and shall also describe in the affidavit the property for which the debt was created. When the affidavit is made by the agent or attorney at law, he may swear that the amount claimed to be due, is due according to the best of his knowledge and belief. The officer issuing the attachment, before issuing the same, shall take from the party seeking the benefits of this Act, a bond in double the amount claimed to be due, conditioned, and made payable as attachment bonds are now, by the Statute Law of Georgia, required to be conditioned and made payable.

8. SEC. III. That affidavit being thus made and bond given, it shall be the duty of the officer before whom such affidavit is made, to issue an attachment against the defendant, wkich shall be levied *only* on the property described in the affidavit, by the officer to whom the attachment is directed.

9. SEC. IV. That so much of the Statute Law of Georgia as regulates the proceedings in relation to remedy by attachment, as is not in conflict with the provisions of this Act, shall apply to and control proceedings under this Act.

Approved December 12th, 1871.

The foregoing Act appears in the Code of 1873, as sections 3293–4–5–6.

The lien of such an attachment is given by the following section of the Code, which is the Act of March 4th, 1856 :

§3292. (3225.) *Vendor may attach for purchase money.* In all cases of sale of lands, where the vendor has not executed a deed of conveyance to the purchaser for the same, but has given bond for titles, or other evidence of the contract, and the purchase money has not been paid, and the vendee shall become liable to attachment agreeable to the provisions of section 3264 of this Code, attachment may issue against him at the instance of the vendor, upon complying with the provisions of this Code in relation to attachments ; which said attachment shall be levied upon the land described in the bond, or other evidence of contract for titles, and the subsequent proceedings shall be, in all respects, as heretofore prescribed in this Code in relation to attachments ; and it shall be lawful for the party bound by such bond, or other contract for titles, to file in the clerk's offie of the Superior Court of the county where the land is situated, a good and sufficient deed of conveyance of said land to the obligee of said bond or other contract for titles ; and when judgment is obtained upon such attachment, the execution issuing thereon may be levied upon said land, and the same be sold, and the money arising from said sale shall be appropriated to the payment of said ludgment on the attachment, to the exclusion of any other attachment, judgment, or other debt of the defendant.

But was the right to unite stock with another R. R. contained in the Ga. & Fla. R. R. charter "applicable" to the So. G. & Fla. R. R. ?

If so, had it not been exercised by both Ga. & Fla. R. R., and by So.

Ga. & F. R. R., prior to contract with A. & G. R. R., of June 19th, 1869? By the former by its union with S. W. R. R; and by the latter by its union with the Ga. & F. R. R., under Act of December 22, 1857? And had not the power to do so become exhausted by its exercise?

If the power was not exhausted, did it exist to the extent of a sale of *a part* of the road and franchises to another road whose charter conferred no power to make such a contract?

The S. W. R. R. charter was amemded to enable that road to unite with the Ga. & F. R. R. Was not this a legislative interpretation of the power granted?

Even the union of the Ga. & Fla. R. R., (or that part of it below Albany) with the S. G. & F. R. R., both parties professing the power to unite, was confirmed by the Legislature.

The power must be possessed by *both* contracting roads. Green's Brices *Ultra Vires*, 101-2-3-4—124, n. 311 Susquehanna Canal Co. vs. Bonham; 9 Watts & S., 27; Steiner's Appeal, 27 P., St., 313; York & Md. R. Co. vs. Winans; 17 How., 39.

Corporations may not transfer to others their own peculiar powers and privileges. Green's Brices *Ultra Vires*, 305.

It is against public policy. Hays vs. Ottowa & C. R. R., 61 Ill., 422.

Where the *ultra vires* contract is against public policy, it is void. Field on Corporations, 286, §258; Green's Brices, U. V., 308; Hazlehurst vs. Savannah & C. R. R. Co.; 43 Ga., 55.

But the Circuit Court Says: "It is not shown that any powers germain to the subject under discussion can be found in the charters referred to going further than, 'To have, purchase, possess, enjoy and retain lands, rents, hereditaments, tenements, goods, chattels and effects, of whatsoever kind, nature or quality, the same may be, and the same to sell, grant, demise, alien or dispose of.'

"This enumeration of powers is sufficient to enable the companies to purchase a railroad, if not precluded from doing so *by the combined objects and purposes of its charter*; but would not be sufficient without the aid of other legislation to enable it to purchase and possess a line of road outside of the limits prescribed to it. An inspection of the charter of the Savannah, Albany & Gulf R. R. Co., however, shows that the road, purchased in the present case, was not without, but precisely within, the limits of that charter. The charter gave the right to construct a railroad communication between the city of Savannah and the city of Albany, with such continuations and branches as might be requisite. Now, since it had the power to purchase, there is no reason why it should construct a new road the entire distance if it found one to its hand for a portion of the route, which it could purchase."

The language quoted by the Circuit Court is from the charter of the Central R. R,, which is, by adoption, made a part of the charter of the A. & G. R. R.

This language does not confer on the Central Railroad the power to purchase stock in another road.

Central Railroad vs. Collins, 40 Ga., 580, [4-5-6.]

See the language of the charter quoted by the Circuit Court considered and discussed on page 618.

The court there in effect say that in construing the language relied on, the purposes of the charter must be kept in view.

What was the purpose of the charter of the Atlantic & Gulf Railroad Company?

It was chartered "with a distinct reference to a speedy connection with the Gulf of Mexico at Mobile or Pensacola," "from a point as near as practicable to the intersection of the lines of the counties of Appling, Ware and Wayne, crossing the Satilla river at or near Walker's ferry in the vicinity of Waresboro, and thence by the most practicable route to the Western boundary of the State of Georgia at any point between Fort Gains, in the county of Clay and the junction of the Flint and Chattahoochee rivers in the county of Decatur."

Act of February 27, 1856, §IV.

Section VI, says: "It being the intention of the State of Georgia by this act to provide a main trunk railway across her territory connecting the Atlantic with the Gulf of Mexico."

The act of December 19, 1849, provides that the road shall be "continued from Bainbridge to a point on the Western boundary of the State at or near Columbia, in the State of Alabama," "and said point shall be the terminus of said road." So that the beginning of the road lies far to the South-east of Albany, and the Western terminus and Bainbridge, through which the road must pass, lies far to the South-west.

Does the third section of the consolidating act of April 18,1863, confer upon the A. & G. R. R. the power to run a branch road from its main trunk to Albany? That act "continues in force," "the several immunities, franchises and privileges granted to the Savannah, Albany & Gulf Railroad Company."

But under act of November 20, 1851, the right of the S., A. & G. R. R. to complete their road to Albany expired on November 20, 1851. Does the general language of section third of the act of 18663 *revive* this right in view of the changed purpose of the Legislature to reach the Gulf through Bainbridge and to confer upon another company the right to connect Albany with Savannah by a branch road?

The privilege to construct a railway to Albany as granted to the S., A. & G. R. R. by act of November, 1851, was to expire by November, 1861, if not exercised within the ten years. Hence this privilege could not be exercised by the new company (the consolidation extinguished the old and created a new company.

Railroad vs. Ga., 98 U. S., 359.)

"The provision in the act authorizing consolidation, that the new company should have all the powers, privileges, and immunities of the original companies, must, therefore, be taken with the qualification that it should have them so far as they could be exercised and enjoyed by it."

R. R. Co. vs. Maine, 96 U. S., 599, 600.

The company could not do a thing, the time to do which had expired before the power claimed had been granted.

If then the new company had not the power to build a road to Albany they had no power to purchase one already built because the power to purchase is derived by the Circuit Court solely from the aforesaid power to build. It confessedly exists no where else.

Bu if the power did exist in the A. & G. R. R. where is the power to sell to be found in the charter of the S. G. & F. R. R. Co.? They had the power to merge their corporate existence in another road as in Central.

R. R. vs. Ga., 92 U. S. R., 665.

But does this include power to sell a part of their road and to retain their corporate existence as to the remainder.

37 Ga. 644.

Both corporations must possess the necessary powers.

Green's Brices *ultra vires*, 101-2-3-4—124n.

The only power claimed to be possessed by the S. G. & F. R. R. Co. is to "incorporate its stock with the stock of any other company upon such terms as may be agreed on by such companies." The contract, if valid, could not have amounted to more than this. If then such a contract so authorized subjected the S. G. & F. R. R. to the prior mortgages upon the A. & G. R. R., entered into before such consolidation was contemplated, is the converse of the proposition true? Does the consolidation subject the A. & G. R. R. to the lien of the mortgages upon the S. G. & F. R. R? This will hardly be conceded, and yet the principle contended for would seem to require it.

This is further than the courts have yet gone in extending mortgages of railways over after acquired property.

Again the power to issue preferred stock must be expressly granted.

Field on corporations (ed. 1877) 136, Section 121. Green's Brices *ultra vires* 145, 148n., *et. auc.* cited.

All contracts to pay interest on preferred stock not out of net proceeds are void.

Pittsburg and R. Co. vs. Alleghany Co., 63 Penn. St., 126. Lockhart vs. Van Alentyne. Michigan Supreme Court (not reported in 1877.)

Contract for lease of railroad which is not authorized by charter is *ultra vires* and void, and should be rescinded although held several years under the lease.

Thomas vs. R. R. Co., 101 U. S. R., 71. See especially p. 86.

2nd. If the contract between the two railways is valid at all, it is submitted it is only a lease of one to the other. The A. & G. R. R. Co. had the power to lease by adoption of the charter of the Central Railroad which contains such a provision.

But the A. & G. R. R. having failed to pay the stipulated rent (interest on preferred stock) the other party can ask a recission.

Bishep on contracts, section 203.

3rd. Conceding the sale to have been valid, as such we insist we are preferred creditors under the attachment act 1871, the benefit of which we invoke in our intervention.

4th. If not protected by the attachment act we still are creditors of the A. & G. R. R. Co. and entitled to be paid out of property of the debtor not covered by the mortgages, and we submit the S. G. & F. R. R. is not covered by any mortgage on the A. & G. RR.

The mortgages were given before any intention existed to acquire fhe S. G. & F R. R. The conditions necessary to make a mortgage of a railway cover after acquired property are thus laid down by the U. S. S. Court. If the mortgage expressly name the property thereafter to be acquired and it was the intention of the parties to include it, *and no right of a third person is prejudiced*, it will be subject to the mortgage.

Pennock vs. Coe, 23 How.. 117p., see 130, quoting Tindall, C. J.

Where a railroad company mortgages after acquired property the mortagees take the lien subject to the equities of the vendor of such after acquired property.

Fosdick vs. Schall, 99 U. S. R., 251.

See also Fosdick vs. Car Co., 99 U. S. R., 256, re-affirming the foregoing case and stating that as the after acquired property had been sold pending the litigation the intervening vendor should be paid out of the proceeds still in the hands of the Receiver.

The Court proceeds : "The intervening petition on file when the foreclosure sale was made, was notice to the purchasers that the rights they acquired under the sale would be subject to the claim of the Car Com-

pany, (the intervening vendor), as finally determined in the further progress of the cause. A restoration of the cars, (the after acquired property), might, therefore, have been decreed to the intervenor, notwithstanding the sale. Instead of that, the payment of the price, from the fund in Court has been ordered. *We do not understand that any objection is made to this*, if the claaim of the intervenor is superior to that of the mortgages, as we hold it to be." 99 U. S. R., 257; Ketchum vs. St. Louis, 101; Ib., 306, is to fame effect.

Guaranteed stockholders held to be creditors of the corporation in a contest over assets. Totten & Co. vs. Tisen, 54 Ga., 139.

For the foregoing reasons it is respectfully submitted that the decree of the Circuit Court should be reversed.

W. W. MONTGOMERY,
Solicitor for Appellants.

OFFICE SUPREME COURT U.S.
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SUPREME COURT OF THE UNITED STATES.

No. 81.

THOMAS BRANCH, JOHN P. BRANCH, FREDERICK R. SCOTT, AND THOMAS P. BRANCH, PARTNERS AS BRANCH, SONS & CO., THE SOUTH GEORGIA AND FLORIDA RAILROAD COMPANY, W. B. BENNETT, ET AL., APPELLANTS,

vs.

MORRIS K. JESUP, SURVIVING TRUSTEE, AND THE ATLANTIC AND GULF RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

BRIEF OF W. S. CHISHOLM AND ROBERT FALLIGANT,
Solicitors for Appellees.

No. 81.

IN THE SUPREME COURT OF THE UNITED STATES.

THOMAS BRANCH, *et al.*,
APPELLANTS.
vs.
MORRIS K. JESUP, SURVIVING TRUSTEE, AND THE ATLANTIC AND GULF RAIL ROAD COMPANY.

BRIEF OF SOLICITORS FOR APPELLEES.

We object, for the Appellees, to the statement of the case made in Appellants' brief, and submit the following

STATEMENT.

On December 20th, 1867, the Atlantic and Gulf Railroad Company conveyed to John R. Gardner and Morris K. Jesup, Trustees, "all of its railroad, constructed or to be constructed, from the city of Savannah to Bainbridge, or to and from any other points in the State of Georgia, with its superstructure, tracks, rails, bridges, viaducts, culverts, fences and all other appurtenances; together with all rights of way now acquired or obtained, or hereafter to be acquired or obtained by the said parity of the first part, and including all depots, engine houses, car houses, station houses and other structures, all machine shops and other shops, and the lots, pieces or parcels of ground, on which the same are or may be erected, and all the pieces of land which shall be used for depots

or station purposes, with the appurtenances; also all locomotives, tenders, cars and other rolling stock or equipment, and all machinery, tools, implements, fuel and materials acquired, or to be hereafter acquired, for the constructing, operating, repairing, or replacing the said Railroad or any part thereof, or any of its equipment or appurtenances, and including also all franchises, rights and privileges of the said party of the first part connected with or relating to said Railroad, or the construction, maintenance or use thereof," etc.

The conveyance was made to secure an issue of bonds of the Railroad Company.

The Atlantic and Gulf Railroad Company was made by the consolidation of a company bearing the same name with the Savannah, Albany and Gulf Railroad Company.

This last named Company was chartered under the name of the Savannah and Albany Railroad Company, December 25, 1847. It was invested "with all the rights, privileges and immunities which by the laws of Georgia are held or enjoyed by any other incorporate Company," and was empowered to construct a railroad communication between Savannah and Albany, "by such route as the Company may select, with such branch roads towards the north and towards the south from said road, to such point or points as they may deem requisite."

Acts 1847, p. 190.

The Atlantic and Gulf Railroad Company was incorporated February 26th, 1856, and was invested with "all the privileges, immunities and exemptions granted to the Central Railroad and Banking Company, and the Georgia Railroad and Banking Company, or either of them," etc.

Acts 1856, p. 160, sec. IV.

The Atlantic and Gulf and the Savannah, Albany and Gulf became one by consolidation, under the Act of April 18th, 1863, and by Sec. III. of said Act it was provided that "the several immunities, franchises and privileges granted to said Companies by their original charters and the amendments thereof, and the liabilities therein imposed shall continue in force."

The Georgia Railroad and Banking Company was authorized by its charter, granted in 1835, to "have, purchase, receive, possess, enjoy and retain to them and their successors, lands, rents, tenements, hereditaments, goods, chattels and effects, of whatsoever kind, nature or quality the same may be, sufficient for the construction of Banking houses and the erection of the Railroad only, and the same to sell, grant, demise, alien or dispose of."

Prince's Digest, p. 311.

The Central Railroad and Banking Company of Georgia was authorized by its charter, granted December 13th, 1835, to "have,

purchase, receive, possess, enjoy and retain to them and their successors lands, rents, tenements, hereditaments, goods, chattels and effects of whatsoever kind, nature or quality the same may be, and the same to sell, grant, demise, alien or dispose of."

Prince's Digest, p. 326.

The Georgia and Florida Railroad Company was chartered January 22d, 1852, with authority "to construct a railroad from Oglethorpe, or some other point on the Southwestern Railroad, to Albany, in Baker County;" and also "a railroad from Albany to Thomasville, in Thomas County, and from thence to the Florida line in the direction of Tallahassee." It was invested "with the same powers and privileges which have been granted to the Savannah and Albany Railroad Company by its original charter and the Acts amendatory thereof," and with the right to "incorporate their stock with the stock of any other Company, on such terms as may be mutually agreed upon by such Companies."

See page 4 of Appellant's brief.

The South Georgia and Florida Railroad Company was chartered with power "to survey, lay out and construct, equip, use and enjoy, a railroad from Albany, in the county of Dougherty, or any point in its vicinity, on either side of the Flint River, to Thomasville, in the county of Thomas, and from Thomasville to any point on the Florida line," etc. The charter provided that "the provisions of the Act incorporating the Georgia and Florida Railroad Company, so far as applicable, shall be applied to said South Georgia and Florida Railroad Company."

About six months after the conveyance was made by the Atlantic and Gulf Railroad to Gardner and Jesup, Trustees, a contract was made by that Company with the South Georgia and Florida Railroad Company, whereby the latter agreed to construct a road from Thomasville to Albany, and to turn it over in sections of ten miles each, as they should be completed, to the Atlantic and Gulf Railroad Company, which was "to receive, occupy, work and maintain each section as completed," and to pay seven per cent. interest per annum semi-annually on the actual cost of each section; when the whole line of road was completed the stock of the two roads was to be consolidated, and thereafter seven per centum of the actual cost of the road from Thomasville to Albany was to be continued to be paid to the Stockholders receiving the guaranteed stock; and it was provided by said contract that "when the stock shall have been incorporated as aforesaid, all the rights, privileges and franchises of the South Georgia and Florida Railroad Company, so far as relates to the road from Thomasville to Albany, shall vest in the Atlantic and Gulf Railroad Company, and the said road shall be a branch of the said Atlantic and Gulf Road."

By a subsequent agreement, dated January 15th, 1869, the foregoing contract was modified in two particulars, only one of which need be considered, viz.: Bonds were to be issued by the South Georgia and Florida Road, which were to be assumed by the At-

lantic and Gulf and paid at their maturity by it; bonds so assumed should be, *pro tanto*, a satisfaction of the purchase money of the road and would decrease the amount of guaranteed stock to be issued.

A second modification of the contract was made September 1st, 1869, it being provided by an agreement at that date that the South Georgia and Florida Railroad might issue second mortgage bonds, which the Atlantic and Gulf Railroad would assume in lieu of issuing an equal amount of guaranteed stock.

Under the contract, so modified, the Atlantic and Gulf Railroad paid for the road from Albany to Thomasville, by assuming the first mortgage bonds of the latter Company to the extent of $464,000, second mortgage bonds to the extent of $200,000, and by delivering its guaranteed stock to cover the balance of the cost of the road, amounting to, say, $300,000, making the cost of this branch, 58 miles in length, $964,000.

Points & authorities

I.

The purchase of the line from Albany to Thomasville by the Atlantic and Gulf Railroad Company was valid.

The Savannah, Albany and Gulf Railroad was chartered to construct a Railroad between Savannah and Albany by such route as the Company might select, with such branch roads towards the north and towards the south as might be deemed requisite. (See statement, p. 2.)

It was invested with the power to buy this road as well as to construct it, because it had the powers of the Central Railroad and Banking Company of Georgia, among which was the right "to have, *purchase, receive, possess, enjoy and retain*, to them and their successors, lands, rents, tenements, hereditaments, goods, chattels and effects *of whatsoever kind, nature or quality the same may be*, and the same to sell, grant, demise, alien or dispose of." (See statement, *ante*., p. 3.)

The contracts for the building of this line from Thomasville to Albany show that the South Georgia and Florida Railroad really acted as a contractor in building the road for the Atlantic and Gulf Railroad Company. The relations of the two companies towards each other were those generally occupied by railway company and contractors, respectively: the road was to be turned over to the Atlantic and Gulf Company in sections as it was finished, to be received, occupied, worked and maintained as a part of the Atlantic and Gulf Railroad: the contractor, the South Georgia and Florida Railroad Company, was to be paid in the stock of the Atlantic and Gulf Company, a very common method of payment.

1 Redfield on Railways (fifth edition), p. 458.

The South Georgia and Florida Railroad Company was chartered for the purpose of building this very line, so that its power to construct cannot be questioned. Its power to sell is equally free form doubt. It had all the powers of the Georgia and Florida Railroad (see statement *ante*, p. 3), which had all the powers and privi-

leges of the Savannah and Albany Railroad, and this last named Company was, as we have already shown, empowered "to sell, grant, demise, alien or dispose of" its property, "of whatsoever kind, nature or quality the same may be."

Now, here were two Railroad Companies, both having power to build and operate this branch from Thomasville to Albany.

The Atlantic and Gulf Railroad Company's purchase was valid, either under the special power above stated, or under its general powers as a railroad corporation.

"A corporation may purchase from another Company, as well as from an individual, and it may make the best bargain it can in order to obtain any property which is required for a purpose authorized by its charter. If, then, one Company should desire to sell all of its fixtures and stock in trade, and another Company should have a legitimate use for substantially the same property in carrying on its own business, the latter Company would be entitled to purchase the whole concern of the former."

Morawetz on Corporations, § 218.
Moss *vs.* Averill, 10 N. Y., 449.

McAllister v. Plant 54 Miss 106. 119

The South Georgia and Florida Railroad Company's sale was valid, either under its special power to sell or under its right to incorporate its stock with the stock of any other Company, which power it got by adoption from the charter of the Georgia and Florida Railroad Company.

See *ante* p. 3.

It may be true that a railroad company cannot, ordinarily, sell its road, in part or in whole, but in this case express power was given not only to sell the road, but to even *obliterate* the South Georgia and Florida Railroad Company, by incorporating its stock with that of any other Company.

The Appellants contend that the case of *Central Railroad vs. Collins*, 40 *Ga.*, 582, has determined that the special powers to buy and sell above cited did not authorize the purchase by the Atlantic and Gulf of this branch from the South Georgia and Florida.

That case decided that Railroad Companies chartered to build railroads from Savannah to Macon and from Macon to some point on the Chattahoochee River, could not buy stock in a railroad leading from Savannah to Bainbridge—a terminus several hundred miles from Macon and in a very different direction. Such an undertaking was not necessary to, nor within the purposes of, the organization of the two Companies proposing to purchase, and on that account they were enjoined from purchasing the stock. It is therefore evident that the case of *Central Railroad vs. Collins* decides nothing in the case at bar.

This view was taken of case by the same Court in Chastain et al v The Savannah & Albany R.R. Co Ga 58.

II.

The Atlantic and Gulf Railroad Company was authorized by its charter and the laws of Georgia to issue preferred or guaranteed stock in part payment for the line from Thomasville to Albany.

Hazlehurst *vs.* Savannah etc. Railroad Company, 43 Ga., 13 and 53.
2 Redfield on Railways, p. 527 and note 1.

The Court say in the last named case, referring to preferred or guaranteed stock, "We are inclined to the opinion that if there be no express prohibition against such issue in the charter, a corporation has power to issue such stock, keeping within the amount of stock limited within by the charter." It is not claimed in the case at bar that the Atlantic and Gulf Railroad was expressly prohibited from issuing this preferred stock or that it exceeded its stock limit by the issue.

III.

It is claimed by the Appellant that the South Georgia and Florida had no power to sell a *part*, even if it had authority to sell the whole road, or proposed road, from Albnny to the Florida line. They rely in support of this proposition on the case of *Upson County Railroad vs. Sharman*, 37 *Ga.*, 644, which case decides that when a railroad company is authorized by its charter to sell its road, it cannot sell the iron separate from the road bed.

The language of the South Georgia and Florida Railroad's charter, shows that there were to be two lines of road; the railroad was to be built from Albany to Thomasville, *and from Thomasville* to any point on the Florida line.

It is scarcely possible that the Legislature intended the Company to build from Thomasville to the Florida line, a distance of about fifteen miles, until it could meet there some other line of railroad willing to connect with it, a circumstance which might never happen. The road from Albany to Thomasville was a complete line in itself, and connected two important towns.

IV.

But suppose that the sale was *ultra vires*, either because the South Georgia & Florida Railroad had no power to sell, or because the Atlantic & Gulf Railroad was not authorized to buy: would that prevent the title from passing to the purchaser?

"A transfer of property by or to a corporation cannot be set aside merely for the reason that it was unauthorized on the part of the Company; but the State alone can complain on account of the unauthorized exercise of corporate power."

Morawetz on Corporations, § 116.

To the same effect,

Field on Corporations, §§ 265, 266 and cases cited in Note 1 on page 295.

"Where a corporation is incompetent by its charter to take a title to real estate, a conveyance to it is not void, but only voidable, and the sovereign alone can object. It is valid until assailed in a direct proceeding for that purpose."

Mr. Justice Swayne in National Bank *vs.* Matthews, 98 U. S. 628.

See also, Runyon *vs.* Coster, 14 Pet. 122.
Cowell *vs.* Springs Co., 100 U. S., 55, 61.
Christian Union *vs.* Yount, 101, U. S., 356.
Smith *vs.* Sheeley, 12 Wall, 358, 361.

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V.

The Appellants contend that the charter of the South Georgia and Florida Railroad Company expired on December 13th, 1872.

It was provided by the original charter that the Railroad should be commenced within five years, or the charter would be forfeited; within those five years the time for building the Road was extended ten years longer by the Act of December 13th, 1862.

See Appellants' Brief, p. 7.

The language of this last Act was that the Act incorporating the Company "be and the same is hereby extended and shall continue in force from the term of ten years," &c.

The object of this Act was to prevent the forfeiture which would result if the road was not built within the time limited by the original charter, and the Legislature did not thereby intend to limit to the brief period of ten years, the life of a corporation which was unlimited by its original charter.

It makes no difference to the Appellees whether or not the South Georgia and Florida Railroad Company was in existence after December 13th, 1872. Irrespective of the deed dated January 8th, 1876, the Atlantic and Gulf Railroad Company had good title to the road under the contracts providing for its construction: when the purchase money was all paid, the title vested in the Atlantic and Gulf Railroad Company.

Stamper *vs.* Griffin, 12 Ga., 457-8.

These contracts were good as color of title, even if they did not pass the title.

Ibid.

And the possession of the road for more than seven years under these contracts gave the Atlantic and Gulf Railroad Company a perfect title as against all the world: "adverse possession of lands under written evidence of title for seven years shall give a good title by prescription."

Code of Georgia (1873) § 2682.

The railroad was completed, paid for and turned over to the Atlantic and Gulf Railroad Company prior to January 1st, 1871. (See Transcript of Record, pp. 57 and 58.) The South Georgia and Florida Railroad Company made no claim to the road till May 28th, 1879, more than eight years after the Atlantic and Gulf Railroad took possession and paid the purchase money. When the Appellants intervened in the case, the Atlantic and Gulf Railroad was not making any attempt to compel specific performance of the contracts; they had already been specifically performed and the said Company was in possession of the road as owner.

VI.

The Attachment Act cited in Appellants' brief has no applicability to the case at bar. This statute was enacted December 12th, 1871, after the Jesup mortgage was given, and after the road had been turned over to the Atlantic and Gulf Railroad Company, and paid for by it; in so far as it may effect the rights of those interested under the Jesup mortgage, this statute will not be given a retroactive construction.

Wade on Retroactive Laws, § 34.

Indeed it would be unconstitutional if it divested any rights acquired by the holder of the bonds secured by the Jesup mortgage.

This mortgage of trust deed in terms covers after acquired property of every nature. See statement *supra*, p. 1.

The following authorities establish the validity of such a mortgage and its lien on after acquired property.

Pennock *vs.* Coe, 23 How., 117.
Galveston Railroad Company *vs.* Cowdrey, 11 Wall. 459.
U. S. *vs.* New Orleans Railroad, 12 Wall., 362.
5 Otto, 10.
Jones on Railroad Securities, §§ 147, 148.

A comparison of the language used in the trust deed to Jesup, with the language under which it was held in *Pennock vs. Coe*, that the mortgage covered after acquired property, will show that the two cases are nearly exactly alike.

It would make no difference whether the Atlantic and Gulf Railroad Company built or bought the road; the language of the mortgage is broad enough to cover either case. Suppose the contest here was over engines, instead of a road, would it make any difference whether such engines were *purchased* or *built* by the Atlantic and Gulf Railroad Company? And yet, what difference in principle is there between the two classes of property?

The Appellants also contend that the mortgage does not cover this branch, because it was given before any intention existed to acquire the road. The Company had power to construct or buy this

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branch, and under the authorities cited, no other "intention to acquire" is required.

The Statute of December 12, 1871, Code of Georgia, § 3293, concerning attachments for purchase money, gives no lien; it only provides a remedy. (See the Act, cited p. 22 Appellants' Brief.) Section 3292 of the Code of Georgia, (Act of March 4th, 1856,) on which the Appellants rely for their lien, has no reference to attachments for purchase money under the Act of December 12, 1871, it only applies in cases where "the vendee shall become liable to attachment agreeable to the provisions of Section 3264 of this Code."

See the Act on p. 22 of Appellants' Brief.

Section 3264 of the Code is as follows:

"Attachments may issue in the following cases:

1. Where the debtor resides out of the State.
2. Where he is actually removing or about to remove without the limits of the county.
3. When he absconds.
4. When he conceals himself.
5. When he resists a legal arrest.
6. When he is causing his property to be removed beyond the limits of the State."

The Atlantic & Gulf Railroad Company did not come within the provisions of this section.

The vendor has no lien for the purchase money of lands unless the vendee comes within the provisions of the last cited section of the Code. "The vendor's equitable lien for the purchase money of lands is abolished in this State."

Code of Georgia, (1873) § 1997.

Under the laws of Georgia the *levy* of an attachment is necessary in any case to give the attaching creditor a lien.

"*Lien of attachments, how created.* The lien of attachment is created by the levy," etc.

Code of Georgia (1873) § 3331.

No attempt has been made by the Appellees to comply with the provisions of this attachment Act; they have not given any bond, as the Act requires.

See Act cited p 22, Appellant's Brief.

And the Appellants must have been *creditors* in order either to avail themselves of the provisions of the attachment Act or to get any money judgment or decree against the Atlantic and Gulf Railroad.

The South Georgia and Florida Railroad Company, *say the Appellants*, no longer has any existence. They claim that it was dissolved by expiration of its charter in 1872. If that is so, of course the defunct corporation cannot sue.

But even if it is alive, and its charter still of force for any purpose, still the said corporation has become consolidated with, and a part of the Atlantic and Gulf Railroad, so far as this branch is concerned. The contract of June 19th, 1868, says: "When the stock shall have been incorporated as aforesaid, *all the rights, privileges and franchises* of the South Georgia and Florida Railroad Company, so far as relates to the road from Thomasville to Albany, shall vest in the Atlantic and Gulf Railroad Company, and the said road shall be a branch of the said Atlantic and Gulf Road."

See Transcript of Record, p. 51.

And how could the South Georgia and Florida Railroad remain a creditor of the Atlantic and Gulf Railroad after it had parted with the consideration paid for the road, viz.: the Bonds assumed by the Atlantic and Gulf Railroad Company and the preferred stock?

The petition filed by intervenors states that the preferred stock "was by said South Georgia and Florida Railroad Company distributed among the contractors who built the latter road in payment for their labor."

Transcript of Record, p. 46.

The holders of the preferred stock are *not creditors* of the Atlantic and Gulf Railroad Company; they are *stockholders* and with all the rights of stockholders.

St. John *vs.* Erie Ry., 22 Wall., 147.
Toten & Co. *vs.* Tison, 54 Ga., 139, 142.

Such was the intention of the parties: the contract of June 19th, 1868, agreed that "the *stock* of the South Georgia and Florida Railroad Company shall be *incorporated with the stock* of the Atlantic and Gulf Railroad Company."

See Transcript of Record, p. 51.

The scrip certified that the bearer was entitled to certain *shares* of *special stock* of the Atlantic & Gulf Railroad Company.

See Transcript of Record, p. 58.

The scrip issued for this preferred stock certainly cannot be called promissory notes or negotiable instruments of any nature; they contain no promise to pay; they do not show any indebted-

ness on the part of the Company issuing them; that they are payable to bearer, does not make them negotiable instruments; "written contracts are not necessarily negotiable because by their terms they enure to the benefit of the bearer."

Railroad Company *vs.* Howard, 7 Wall, 415.

The consideration paid by the Atlantic and Gulf Railroad for this branch was, as has been shown, bonds which it undertook to pay amounting to $664,000 and preferred stock for $300,000. There can be no rescission of the sale; "a contract can only be rescinded when both parties can be restored to the condition in which they were before the contract was made."

Code of Georgia (1873) § 2860.

The intervenors cannot release the Atlantic and Gulf Railroad Company from its undertaking to pay said bonds; no question is made by Appellants as to the obligation of the Company to pay the first mortgage bonds amounting to $464,000. The Appellants do not even offer to return the interest which they have received on their stock.

VII.

ESTOPPEL.

The road was turned over to the Atlantic and Gulf Railroad Company prior to January 1, 1871, as we have shown; the Appellants who hold the preferred stock of the Atlantic and Gulf Railroad Company, and those from whom they bought it, received dividends thereon from May 1, 1870, to November 1, 1874; they were entitled to vote these shares at the stockholders' meeting, and to participate in the management of the Company.

St. John *vs.* Erie Railway, 22 Wall., 147.

The mortgage executed to Kelly and Strang, Trustees of the Atlantic and Gulf Railroad Company, was made January 1, 1872, after these stockholders became entitled to participate in the Company's management. This last named mortgage covers this branch road by its express terms. No objection was made to its execution and delivery by the Appellants, who cannot now restore the Atlantic and Gulf Railroad Company to the position it occupied before the sale, and who never made any attempt to rescind until long after the road went into the hands of the Receivers. The Appellants are estopped from claiming any other or different rights than those which they possess as preferred stockholders, and from claiming adversely to these two mortgages.

"Corporations, as much as individuals, are bound to good faith and fair dealing, and the rule is well settled that they cannot by their acts, representations or silence, involve others in onerous

engagements, and then turn around and disavow their acts and defeat the just expectations which their own conduct has superinduced."

Railroad Company *vs.* Howard, 7 Wall., 413.

And this is so when the acts of the corporation are *ultra vires*.
Ry. Co. *vs.* McCarthy, 6 Otto, 267.

See, also— Purcell on Railroads 5-18, 5-19
Chubb *vs.* Upton, 95 U. S., 667.
Cozart *vs.* Ga. Rd. & Bkg. Co., 54 Ga., 384.
Hazlehurst *vs.* Rd. Co., 43 Ga., 54 to 57.
May *vs.* Memphis, &c., Co., 48 Ga., 109.
96 U.S. 215-35-1
78 N.Y. 159.

The Appellants contend that the contract constituted a lease. There is not a line in the contract which will bear this construction. In 1876 the South Georgia and Florida Railroad Company executed a *deed* to the Atlantic and Gulf Railroad Company for this branch. The contracts evidence a *sale* and nothing else.

The opinion of Mr. Justice Bradley in this case is reported in 3 Woods' Reports, pp. 481, 487. We respectfully refer the Court to said opinion, in support of the positions here taken.

W. S. Chisholm
R. Pacetigaat
Solicitors for Appellants

FILED
NOV 2 1891
JAMES H. McKENNEY, Clerk.

SUPREME COURT OF THE UNITED STATES.

No. 81.

THOMAS BRANCH, JOHN P. BRANCH, FREDERICK R. SCOTT, AND THOMAS P. BRANCH, PARTNERS AS BRANCH, SONS & CO., THE SOUTH GEORGIA AND FLORIDA RAILROAD COMPANY, W. B. BENNETT, ET AL., APPELLANTS,

vs.

MORRIS K. JESUP, SURVIVING TRUSTEE, AND THE ATLANTIC AND GULF RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

ADDITIONAL BRIEF OF W. S. CHISHOLM AND ROBERT FALLIGANT,

Solicitors for Appellees.

ADDITIONS TO POINTS IN ORIGINAL BRIEF.

TO POINT I.

It is contended for the appellants, that the power given to the Savannah and Albany Railroad Company, to build the line to Albany expired in 1861, and that the power was not re-granted or revived by the consolidating act of April 18th, 1863, which enacted, "That the several immunities, franchises and privileges granted to the said Savannah, Albany and Gulf Railroad Company, (the name of the Savannah and Albany Railroad Company, having been changed to the Savannah, Albany and Gulf Railroad Company, by the Act of May 8th, 1854), and the Atlantic and Gulf Railroad Company, by their *original charters* and the amendments thereof and the liabilities therein imposed, shall *continue of force* except so far as they may be inconsistent with the Act of consolidation."

By the Seventh section of the Act of 1847, it was enacted, "That if said company shall not in good faith have commenced said Railroad by the first day of November, 1849, or shall not have completed the same within six years thereafter, the rights, privileges and immunities herein granted, *shall be forfeited.*"

By the Act of November 20th, 1851, the time for the completion of said railroad and branches, was extended to ten years from and after the passage of said Act.

The penalty for the failure of the company to complete the line to Albany, either as the main line, or as a branch, was not that any right, privilege or immunity should either cease or expire, but that they "*shall be forfeited.*"

This penalty was a condition subsequent.

"Conditions may be either precedent or subsequent. The former require performance before the estate vests: the latter may cause a forfeiture of a vested estate."

Georgia Code (1873) § 2294.

"The condition to complete the road and branches within a given time was a condition subsequent, the franchise vesting in the grantee subject to be defeated by its omission to perform the condition."

Brooklyn Cen. R.R. Co. *vs.* Brooklyn City, 32 Barb., 359.

"The omission did not, *ipso facto*, determine the estate, but exposed it to be determined at the election of the grantor. But nothing short of a judicial decision upon the question could deprive the grantee of the franchise, or impair its rights of property therein."

Ibid. 32 Barb., p. 359.

"The non-user or mis-user of its franchises by a corporation, or its breach of the condition on which its duration is, by the law of its creation, made to depend, is a cause of forfeiture. Such defaults, however, do not of themselves work a forfeiture, but they take effect only when judicially determined in a direct proceeding instituted for that purpose."

Pierce on Railroads (edit. 1881), p. 11.

"A Corporation may forfeit its Charter: 1st, by a willful violation of the essential conditions on which it is granted. 2d, by a non-user or mis-user of its franchises. This dissolution dates from the judgment of a Court of competent jurisdiction declaring a forfeiture."

Georgia Code, (1873) § 1685.

"A cause of forfeiture which has not been judicially declared in a direct proceeding, cannot be taken advantage of collaterally. The State alone having the right to insist on a forfeiture can waive it directly or by application."

Pierce on Railroads, p. 12 and cases in Notes.
Young *vs.* Harrison, 6 Ga., 131.
U. B. R.R. Co. *vs.* E. T. & Ga., R.R., 14 Ga., 329.
Matter of N.Y. Elevated R.R. Co., 70 N. Y., 327.

All of the rights, privileges, franchises and immunities of the Savannah and Albany Railroad Company not having been declared forfeited by a proper judicial decision, were therefore of force in 1863, and the language of the Act of 18th April, 1863, continuing them in force, was a waiver of the forfeiture.

1 Brown & Hadleys Blackstone, Waite's Notes, n. 196, on p. 413.

But the words "shall continue of force" as used in Sec. III. of the Act of 18th April, 1863, have been construed by the Supreme Court of Georgia, and also by this Court, to mean *granted*.

Railroad *vs.* Ga., 98 U. S., 359.

The right to build to Albany and also branch roads, towards the north and the south was therefore expressly granted to the new company, the Consolidated Atlantic and Gulf Railroad Company. The condition that they should be completed by the 20th November, 1861, as prescribed in the Act of November 20th, 1851, was a condition subsequent impossible to be performed, repugnant to the estate granted, and therefore void.

Taylor *vs.* Sutton, 15 Ga., 109.

"Void Conditions: Impossible, illegal or immoral conditions are void, and do not invalidate a perfect gift."

Code of Georgia (1873), § 2,661.

"Repugnant Conditions: A condition repugnant to the estate granted is void; so are conditions to do impossible or illegal acts or which in themselves are contrary to the public policy of the law."

Code of Georgia (1873), § 2,296.

The several immunities, franchises and privileges granted to the Savannah, Albany & Gulf Railroad Company and the Atlantic & Gulf Railroad Company, by their *original charters* and the amendments thereof, and the liabilities therein imposed, were granted to the Consolidated Company on the 18th April, 1863, except so far as they may be *inconsistent with the act of* CONSOLIDATION.

The franchises were granted free of all former conditions. The term liabilities does not mean conditions. The meaning is fully explained by Sec. IV. of the Act which prescribes that nothing in this Act shall be so construed as to impair the covenants and obligations of the Atlantic & Gulf Railroad Company with and to the State of Georgia, etc., to be found in the original charter of that Company.

But if the liabilities are to include conditions, then the condition to finish by the 20th November, 1861, is not only repugnant to the estate granted but is "*inconsistent with the Act of Consolidation.*" The condition was attached to the commencement of the entire road and branches.

If the State should have commenced at any time proceedings to obtain a forfeiture, the utmost which might have been claimed under the Act of April, 1863, would have been what has been called the equity of the Statute; that is, the road and branches authorized under the charter of the Savannah, Albany & Gulf Railroad Company, should have been completed within ten years from April 18th, 1863.

The entire Atlantic and Gulf Railroad, including the portion from Thomasville to Albany, has been sold under the decree set forth in Record, p. 62. The sale was under a partial foreclosure of the mortgage to Jesup & Gardner, a full foreclosure of the mortgage to Keely & Strong, and the various interventions, among which were claims by the State of Georgia for taxes, including taxes on this road from Thomasville to Albany.

After the sale regular proceedings for confirmation were had, and the appellants and the State of Georgia, which had intervened, were made parties. They interposed no objections, the appellants relying doubtless upon their pending appeal, although without a supersedeas.

The purchasers were incorporated under the Act approved February 29, 1876, entitled, "An Act to enable the purchasers of railroads to form corporations, and to exercise corporate powers, and to define their rights, powers and privileges.

In pursuance of the terms of said Act the purchasers filed in the Secretary of State's Office the required certificate describing the lines of railroad and the amount of their capital stock, and were duly incorporated under the name of the Savannah, Florida and Western Railway Company.

By Section 11 of said Act it is prescribed, "That such corporation shall possess all the powers, rights, immunities, privileges and franchises in respect to such railroad, or the parts thereof, included in such certificate, and in respect to the real and personal property appertaining to the same, which were possessed or enjoyed by the corporation which owned or held such railroad previous to such sale, under or by virtue of its charter and any amendments thereto, and of other laws of this State."

By an Act, approved Sept. 13, 1881, the charter of the Savannah, Florida and Western Railway Company was amended as follows:

SEC. 2. Be it further enacted, That said railway company possess, and the same are hereby granted and confirmed to it, all the franchises in respect to its railroad and other property, including any extensions, branch roads or other property, which may hereafter be acquired, which were possessed or enjoyed by the Atlantic and Gulf Railroad Company, under and by virtue of its charter, or any amendments thereof; and that said railway company shall possess, and the same are hereby granted and confirmed to it, power and authority to build such extensions and branch roads as were authorized by the charter of the Atlantic and Gulf Railroad Company.

SEC. 3. Be it further enacted, That the said railway company shall have power to purchase, own, lease or contract for the use and enjoyment of, in whole or in part, any railroad or railroads lying within or without this State, if the same shall connect with or form a continuous line, or part of a continuous line of travel and transportation with the railroads owned, managed or controlled by said railway company, and the same to maintain and operate."

"SEC. 4. Be it further enacted: That said Railway Company shall have power to increase its capital Stock, of Two Million Dollars, to such an amount or amounts, as may be required, from time to time, to represent capital invested in the payments of its debts, building, extensions, branches, betterments, or the acquisition of property of any kind which it may lawfully hold and possess, under its charter, or any amendment thereof."

"SEC. 5. Be it enacted: That all laws or parts of laws, in conflict with this Act, be and the same are hereby repealed."

Under this legislation it certainly cannot be insisted that it was against public policy for the Atlantic and Gulf Railroad Company of 1863, or its successor, the Savannah, Florida and Western Railway Company, to own, possess or operate the road from Thomasville to Albany, a part of a through line from Montgomery, Alabama, to Savannah, Georgia, and Jacksonville, Florida. These acts certainly amount to a waiver on the part of the State of any forfeiture which might have been incurred, and we think to an express grant of all the old franchises without conditions.

TO POINT II.

But it is contended that the power of the South Georgia and Florida Railroad Company, "at any time to incorporate their stock with the stock of any other company, on such terms as may be mutually agreed upon by such companies," did not authorize the contract for guaranteed stock, for the reason that the Atlantic and Gulf Railroad Company did not have the power to issue such stock.

The Atlantic and Gulf Railroad Company had all the rights of the Georgia Railroad and Banking Company, and that Company had power to issue stock "at such times and on such terms, limitations, restrictions and conditions as the stockholders in convention may deem expedient and proper."

Sec. VIII., Act 25th, Dec.. 1847.
See also Sec. XIII., Charter of Georgia Railroad and Banking Co., cited by Appellant, Brief, p.p. 12, 13.

The issue of the guaranteed stock when added to the issue of the common stock of the Atlantic & Gulf Railroad Company did not exceed the amount of stock permitted to be issued under the charter of the Company. It was, therefore, not contrary to public policy.

Hazelhurst *vs.* Savannah, etc., 43 Ga., 13, 53.

The common stockholders might have complained if any stock preferred to theirs was issued: but this could be waived either by consent or acquiescence.

Ibid.

Pierce on Railroads, p.p. 518–519.

It never did lie in the mouths of the voluntary holders of the preferred or guaranteed stock to object. Nor is the contract void because "interest from date is perpetually guaranteed at the rate of seven per cent., payable semi-annually."

There is no particular significance to be deduced from the word *guaranteed*; it does not add any legal strength to the promise.

Taft, Trustee *vs.* Hartford, etc. R.R., 8 R. I., 333–5.

Nor is the contract void because it does not expressly stipulate that the interest is to be paid out of net income. The contract that such interest is to be paid only out of net income is always implied, but when not so expressed it is cumulative.

Morawetz on Corp., §352.

TO POINT III.

It is also argued that it was not competent for the South Georgia and Florida to sell a part of their Railroad. In fact, when the first contract was made there was no South Georgia and Florida Railroad, there was nothing but a charter, and when the Railroad from Thomasville to Albany was completed, all the stock was surrendered and cancelled, and the guaranteed stock of the Atlantic and Gulf Railroad Company was accepted in place thereof in payment of the finished road from Thomasville to Albany. To treat the road from Thomasville to Albany as a separate enterprise was certainly not contrary to public policy.

By the Act of September 26, 1868, under which State aid was granted by endorsement of bonds at the rate of $8,000 per mile, the road to be aided is described as the Road from Albany to Thomasville.

See Appellants' Brief, p.p. 7, 8, 9.

After this road had been completed and turned over to the Atlantic and Gulf Railroad Company, (as shown by the minutes of October 10, 1870, see Record, p. 57), the Act of October 17th, 1870, was passed granting aid by endorsement of bonds at the rate of $12,000 per mile, for such portion as had not been finished.

See Appellants' Brief, p. 9.

This amendment but reannounced the public policy of considering the enterprises separate; but if otherwise, it could not change the former policy as declared in the first act, so as to impair rights which had been acquired thereunder, and during its continuance.

This power originally granted to the Georgia and Florida Rail Road Company, "to incorporate their stock, with the stock of any other company, on such terms as may be mutually agreed upon by such Companies," was considered sufficient to authorize a sale of the portion of their Railroad from Albany to Americus to the South Western Railroad, for the stock of the latter Company.

The enabling Act afterwards passed by the Legislature, was not to give any further power to the Georgia and Florida Railroad, but to permit the South Western Railroad to increase its stock, and to own a road to Albany. Such an enabling Act was unnecessary in this case, as the Atlantic and Gulf Railroad Company did not require an increase of its capital stock, and did have a franchise to own a Railroad from Savannah to Albany "by such route as the company may select."

See Appellants' Brief, p.p. 10-11.

TO POINT VI.

If the South Georgia and Florida Railroad Company should be considered the contractor to build the line from Thomasville to Albany, it agreed to do so, for stock in the Atlantic and Gulf Railroad Company, on which seven per cent. per annum was guaranteed, payable semi-annually, and the assumption by the Atlantic and Gulf Railroad Company, of the payment of principal and interest, of the bonds of the South Georgia and Florida, to the amount of $664,000.

The Contract was a simple one, and was *executed* on both sides before the first of November, 1870.

There was no lien reserved to secure the payment of the interest guaranteed; there was no vendor's lien in Georgia. The language of the contracts or of the Scrip do not express or imply a contractor's lien. In fact when the work was done there was no contractor's lien in Georgia. And if there had been, it should have been enforced as regulated by Statute, at the time the intervention was filed.

"The vitality of the contractor's lien depends upon these several things—the work must be completed, the lien must be *recorded* and suit must be brought thereon within twelve months from its record; if the three things do not concur in fact, or there is a failure in either, then the lien is inoperative, even against the defendant."

Cheery for use *vs.* The North and South Railroad, 65 Ga., p. 635.

There is no record of any lien in this case by the South Georgia and Florida Railroad Company, or by any of its transferees, nor were either of the interventions filed within twelve months after the recording of the contracts.

The South Georgia and Florida Railroad Company does not claim to hold any of the scrip; it has all been assigned and delivered to various parties.

Under the statutes of Georgia, certain liens are established and enumerated; among them are the liens of contractors and those of creditors by judgment or decree.

Code of Georgia, § 1,972.

All liens provided for in this article, (among which are the above), may be assigned by writing, and not otherwise, and under such assignment the assignee shall have all the rights of the assignor as regulated by this Article.

Code of Georgia, § 1,996.

"The lien of attachments is created by the lien, and not judgment on attachment, and in case of conflict between attachments, the first levied shall be first satisfied; but in a contract between attachments and ordinary judgment suits, it is the judgment and not the levy which fixes the lien."

Code of Georgia, § 3331.

Appellants became stockholders in the Atlantic and Gulf Railroad Company on or before the first of November, 1870. In the year 1872 the Atlantic and Gulf Railroad Company, of which they were stockholders, was duly authorized to mortgage its entire line, including the road from Thomasville to Albany, to secure an issue of $1,500,000 of bonds.

The decree shows that the property was sold under foreclosure of its mortgage, a lien made and created by themselves, and also under the superior lien of the state for taxes.

The sale to the purchaser has been confirmed without objection on their part. They now wish an entire line of Railway dismembered and a portion of the line to be turned over to them, because they have been disappointed in the result of an investment in the special stock of a railroad which afterwards became insolvent.

The Circuit Court was right; there was no equity in the interventions and they should have been dismissed.

W. S. Chisholm

R. Fielding and